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FEDERAL-STATE RELATIONS IN TRANSITION: IMPLICATIONS FOR ENVIRONMENTAL POLICY

A REPORT

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U.S. SENATE

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United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, D.C. 20510

February 28, 1982

Dear Colleague:

I am pleased to recommend to my colleagues in the Congress and to all who are interested the attached report, "Federal-State Relations in Transition: Implications for Environmental Policy," which has been prepared by the Congressional Research Service of the Library of Congress.

The carrying out of national environmental policy today is firmly grounded in a Federal-State partnership--a sharing of functions for protecting and managing environmental resources. Proposals to apply New Federalism to national environmental policy represent a substantial alteration of that fundamental partnership.

This report provides background information describing how and the reasons why environmental policy evolved from a State and local problem into a national concern. And, the report raises a number of important questions about the consequences of dismantling the national policy structure that resulted from that evolutionary process. I will outline below what seem to me to be the principal points of interest in the report.

The value that has so far been placed on national efforts to protect the environment--including considerations of economic equity and regulatory efficiency--may be significantly reduced by diminished Federal involvement. The danger, however, is not proposals for change. The danger is that we might make changes in individual statutes or programs on the basis of philosophical assumptions or predilections, without adequately debating the practical consequences of those changes.

It is in the hope of stimulating such debate that I recommend the attached report. The value of the report, I believe, is its discussion of how we gradually arrived at today's Federal and State responsibilities for environmental protection, and the implications of disrupting that balance. It should be of assistance to the Members of Congress and others in evaluating proposals to alter how environmental programs will be carried out in the future.

Sincerely yours,

Robert T. Stafford
Chairman

OUTLINE OF PRINCIPAL POINTS

This report reviews the legislative development of Federal interest in environmental protection through air and water pollution control laws. Federal involvement in pollution problems occurred when State and local governments sought help in devising strategies to effectively abate interstate pollution from existing sources. Since pollution is no respecter of political boundaries, States and localities had been unable to halt damaging pollution originating outside of their political jurisdictions. Likewise, areas where pollution was originating had little or no incentive to abate their sources, so long as the pollution traveled downwind or downstream.

Yet, once a national interest in these interstate problems was demonstrated, Federal involvement provided the means to declare national goals, maintain national consistency, and assure the capability of States to carry out their responsibilities. Federal involvement also provided incentive, in the form of financial assistance, to nudge State and local governments that otherwise were reluctant to invest in pollution control programs. Still, the Federal-State partnership that has evolved depends on States and localities for primary implementation and enforcement.

The changes accomplished by Federal involvement in environmental protection efforts yielded an important feature that would not have occurred otherwise: Only then was it possible to

develop pollution control strategies aimed not only at abating current problems but, more significantly, at preventing future problems.

In economic terms, environmental pollution is an externality. It imposes costs upon society as a whole, while the benefits of controlling it are not gained solely or even primarily by the person who institutes control measures. Government's environmental protection efforts have aimed, in part, at requiring polluters to internalize as operating expenses the costs that they impose upon the environment and society. Unlike some other areas of public policy, market forces cannot be expected to fill the gap resulting from reduced government activity.

The basic concept of placing responsibility at the most responsive level of government, closest to the people, has genuine appeal. Appealing, too, are promises that proposed changes will lead to greater efficiency in protecting the environment and will cost less. Yet, in the area of environmental protection, there is legitimate Federal interest that should not quickly or easily be disregarded. Important Federal interest in achieving national goals and minimum nationwide consistency may not be fully compatible with an across-the-board shifting of responsibilities.

One major concern discussed in the report goes to consistency and efficiency: will diminished Federal involvement result in such differences in policies or standards among the States that some States will have distinct competitive advantages over others, while industry faces the administrative inefficiency resulting from a proliferation of varying State and local requirements? Increased

Federal interest in environmental protection was due as much to pressure from industry for consistent regulatory requirements, as it was to State and local government pressures concerning interstate problems.

A very basic problem that States are confronting today is funding: to continue carrying out environmental activities, much less to take on new authorities, requires more dollars rather than fewer. Yet, as this report discusses, most State environmental administrators are facing simultaneous Federal and State budget cuts, and they face the real possibility of competing unsuccessfully with other current programs for reduced funds. Federal financial aid continues to be a key to the States' ability to establish and maintain viable environmental programs.

If sufficient resources are unavailable, States may simply return delegated responsibilities to the Federal government. Clearly, this would disrupt the fundamental balance in our environmental programs of Federal leadership and State implementation. The possible consequences of such "reverse delegation," if widespread, could include: reduced ability of States to manage current activities (such as permitting, monitoring, and enforcement); greater confusion over who is in charge; less coherence in environmental decisionmaking; more Federal involvement; and, very likely, less environmental protection.

The prospect of reduced funding (especially reduced Federal assistance) suggests one other serious consequence: a breakdown in State and regional economic equity that is now provided by uniform

national pollution control requirements. States that once lagged in their commitment to national environmental programs--and were persuaded by the incentive of Federal aid--may find ample reason to relax environmental controls, thereby attracting industry and placing States with stronger environmental programs at a disadvantage economically. The result of individual States' decisions of that type could be recurrence of a major problem which first prompted the larger Federal role in the environment: interstate inconsistencies.

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

December 16, 1981

LETTER OF SUBMITTAL

Honorable Robert T. Stafford, Chairman
Committee on Environment and Public Works
U. S. Senate
Washington, D. C. 20510

Dear Mr. Chairman:

In response to your request, we have prepared a report entitled "Federal-State Relations in Transition: Implications for Environmental Policy." The report discusses the Federal-State partnership that has characterized implementation of the Nation's environmental laws, as well as current proposals to alter that partnership by shifting greater responsibility to State and local governments.

The report consists of four major parts. Section I reviews changes in air and water pollution legislation that led to the current active Federal role in national environmental policies and programs. Section II further discusses two factors that contributed to development of Federal policies: (1) the need for control strategies taking into account the regional and interstate nature of pollution and (2) concern that uneven State and local pollution control efforts can lead to problems of inequities and inefficiency. Section III discusses certain problems that State and local officials have today in implementing current environmental programs. The report concludes with Section IV, which discusses concerns of these same officials about new problems that may occur if they are given substantial new responsibilities.

The report was prepared by Claudia Copeland, an analyst in our Environment and Natural Resources Policy Division. I hope that it will provide valuable information to Congress as it considers these issues of the roles of the Federal and State governments.

Sincerely,

Gilbert Gude

TABLE OF CONTENTS

Page

Introduction.....1

Section I: Legislative Developments that Produced National Environmental Programs.....3

Federal Policy Involvement: The Result of Many Factors.....3

1. The Administration in the White House.....4
2. Congressional attitudes.....6
3. Shift from "abatement" to "prevention" strategies.....8
4. Institutional arrangements at the Federal level.....10
5. Interest groups.....11
6. Public opinion.....12

Enforcement and Grants-in-aid: The Major Legislative Issues.....14

Enforcement.....18

Grants-in-aid.....25

Federal Involvement: Pain or Pleasure?.....30

Section II: Particular Problems, Then and Now.....33

Environmental Pollution is not a Local Phenomenon.....33

1. Political-technological contradictions.....33
2. Localities and States lack powers to enforce abatement outside their jurisdictions.....35

Concerns about State and Local Efforts to Control Pollution.....38

1. Local governments may have little interest in enforcing stringent controls.....39
2. Competence of States and localities has been questioned..40
3. Economic rivalry among communities and States is a strong deterrent.....42

Equity and Efficiency.....43

Page

Section III: Problems and Intergovernmental Tensions Resulting from Current Environmental Programs.....50

Current Problems Resulting in Intergovernmental Tensions.....51

1. Overlap and contradiction.....51
2. Inflexible Federal regulation.....53
3. Financial burden.....56

Can the States be Forced to Carry out Federal Programs?.....57

1. Conditions on Federal benefits.....57
2. Moratoria on private activities.....58
3. Threat of Federal promulgation of plan, Federal assumption of enforcement, or Federal takeover of program.....58
4. Direct coercion of States.....59

State-Local Relations.....60

Section IV: The States' Views on Problems Resulting from New Environmental Responsibilities.....63

Budget Cuts and Taxes: Broad Concerns about New Federalism.....64

Early Indications from the Reagan Administration.....65

What is the Federal Interest?.....67

Issues of Added Responsibility and Adequate Funding.....70

1. Delegation.....71
2. Funding needs.....75
   - What about consolidated or block grants?.....79
   - Implications for enforcement.....82
   - Other implications: continuing the commitment to national policies.....84
   - Considerations when altering the Federal-State role: timing and other factors.....86
3. State-local relations.....90

Conclusion.....92

Table I, Major Federal Water Pollution Control Legislation, Development of Enforcement, Aid Provisions.....16

Table II, Major Federal Air Pollution Control Legislation, Development of Enforcement, Aid Provisions.....17

Table III, State Program Management/Delegation.....72

Appendix

INTRODUCTION

Congress and the Executive Branch are actively considering whether, and if so, how, to shift responsibility for a large number of national programs from the Federal level to State and local governments. President Reagan has frequently articulated his belief that decentralization of government, often called "new federalism," can strengthen control of public services at the State and local level and can make government programs more responsive to local needs and conditions. Specific policies spelling out the new federalism philosophy have been considered in the context of 1982 budget cuts and tax reductions, as well as in the context of ongoing revision of government regulations and general proposals for aiding the Nation's economic recovery.

Underlying this "new federalism" philosophy are a number of popular convictions: that the Federal government is largely to blame for the Nation's problems; that Federal programs result in directives and administrative burdens which frustrate efforts to achieve economic equity and efficiency; and that State and local governments are eager to take on and capable of taking on new responsibilities. According to these views, devolving powers from the Federal level would relieve State and local governments, as well as private citizens, from many unnecessary and inefficient requirements and, in the process, lessen certain intergovernmental tensions that have resulted from policy and program centralization.

However, this critical view of the current federal system, which is being expressed by President Reagan, Administration spokesmen, and others, is not shared by all persons. Most persons would acknowledge that the complexity of the present system is manifested in linkage and interdependence of Federal, State, and local governments. But rather than viewing this complexity as something negative, defenders of the current federal system contend that

an extended intergovernmental partnership is necessary in order to best achieve the wide range of purposes embodied in specific national policies. Moreover, it is not clear whether recent claims as to the willingness and capability of States and localities to be relieved of Federal involvement (to break the links of intergovernmental relations) are valid.

The purpose of this report is to examine implications of new federalism in one area of public policy: environmental protection. In 1981 Congress has been looking at portions of this issue (through certain budget proposals for Fiscal Year 1982 and amendments to the Clean Water Act), but it has not addressed effects on the full range of programs that comprise the Nation's environmental protection effort. In the context of examining proposals to effect new federalism, Congress has the opportunity to analyze whether environmental protection goals have in the past and still today require active Federal involvement.

The report consists of four major parts. Section I reviews changes in air and water pollution control legislation that led to the current active Federal role. Section II examines two considerations that were important in developing national environmental policies: (1) the need for control strategies taking into account the regional and interstate nature of pollution and (2) concern that uneven State and local pollution control efforts had resulted in problems of inequity and inefficiency. Section III discusses some problems that State and local officials have today in implementing current environmental programs. Section IV discusses concerns of these same State and local officials about problems that may arise if substantial areas of responsibility devolve from the Federal government.

SECTION I: LEGISLATIVE DEVELOPMENTS THAT PRODUCED NATIONAL ENVIRONMENTAL PROGRAMS

In view of ongoing public discussions about returning environmental program responsibility to the States, it may be helpful to review the factors and considerations that led to the current strong Federal role. 1/ This section will outline six broad factors that influenced changing Federal-State relations in environmental legislation and will examine the two major issues that dominated policy debate: enforcement and financial assistance.

Two program areas--water and air pollution--will be the focus in this section, because the policies concerning Federal-State relations that were established in those laws by the mid-1960's essentially set the pattern for subsequent environmental legislation during the 1970's. Moreover, major developments concerning water and air pollution policies occurred in parallel, for the most part, except that the water pollution chronology generally started a few years before the air pollution chronology. For example, Federal enforcement powers were authorized seven years earlier in the water pollution field (1956) than the air pollution field.

Federal Policy Involvement: The Result of Many Factors

The earliest official concern with problems of environmental pollution focused on hazards to public health, and laws or ordinances--in the few areas where they did exist--emphasized local control, in the belief that the conditions causing pollution were so variable that no general solution was possi-

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1/ It is not the intention of this report to describe fully the historical development of environmental pollution problems or policies in the United States, but rather to consider issues concerning Federal-State relations. More detailed accounts can be found in such sources as Melosi, Martin V., ed. Pollution and Reform in American Cities, 1870-1930. Austin, University of Texas Press, 1980. 212 p.; and Petulla, Joseph M. American Environmental History. San Francisco, Boyd & Fraser Publishing Company, 1977. 390 p.

ble. 2/ The trend away from local problem solving began during the Administration of President Franklin D. Roosevelt. The pattern of pollution control legislation that began in the 1940's has been one of increased Federal activity since that time. Yet changes involving Federal-State responsibility occurred slowly and incrementally. For example, that issue so divided a 1934 national conference on water pollution that the conferees issued two separate reports on proposals for pollution control, with one group favoring a plan to leave the problem entirely to the States and the other recommending a Federal program to supplement State activities.

It should also be recognized that the changes in pollution control policy were not isolated: other areas of public policy were similarly altered during the period of the 1940's to 1960's, with similar increase in Federal involvement. Several major factors strongly influenced the development of a larger and more centralized Federal role in environmental policy. They included: The Administration in office; congressional attitudes; endorsement of the concept of preventing pollution; institutional arrangements; interest groups; and public opinion. Each factor is discussed below.

(1) The Administration in the White House. Beginning with the Roosevelt Administration, the Federal Government began to hold a new view of traditional "federalism," which previously had emphasized a constitutional division of authority and functions between a national government and independent state governments. The concept of sharing of functions emerged more strongly. In particular the Federal Government began dealing directly with local units of government for the first time, providing work relief funds and emergency

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2/ Melosi, Pollution and Reform in American Cities, p. 73.

public works assistance. After World War II most Administrations promoted increased assistance for needed public services to State and local governments, especially urban areas. 3/ President Eisenhower usually is seen as the exception (he vetoed a water pollution bill in 1960, commenting in his veto message that "water pollution is a uniquely local blight." 4/), in spite of a few policy areas in which he encouraged a strengthened Federal role, such as construction of the interstate highway system.

More importantly, as various Administrations proposed to increase the types and amount of Federal assistance, they also increased the Federal involvement by conditioning how the aid could be used. The result has been considerable centralization in a number of Federally-assisted policy areas, many of which had been traditionally reserved to state and local authority: education, law enforcement, community development, welfare, unemployment, health and medical benefits, and environmental protection. 5/

Under President Nixon pollution control was a major exception to that Administration's efforts to resist centralizing power in the Federal Government. Two reasons for this exception, exemplified by creation of a single Federal environmental agency, have been suggested: (a) many officials of large industries, an important part of President Nixon's constitutency, preferred the administrative efficiency of Federal control; and (b) the

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3/ Magazine, Alan H. Environmental Management in Local Government, A Study of Local Response to Federal Mandate. New York, Praeger Publishers, 1977. p. 9.

4/ U.S. President, 1953-61. (Eisenhower). Veto of Bill to Amend the Federal Water Pollution Control Act, Feb. 22, 1960. Public Papers of the Presidents of the United States. Dwight D. Eisenhower. 1960-61. Washington, U.S. Govt. Print. Off., 1961. p. 43.

5/ Sundquist and Davis, Making Federalism Work, p. 1.

growth in manpower at the Environmental Protection Agency in the early 1970's occurred under Republican leadership and could not be attributed to the presence of holdover Democrats. 6/

(2) Congressional attitudes. During most of the mid-1940's to mid-1960's period there existed congressional majorities supporting an enlarged Federal role. This fact certainly affected the pattern of Federal-State relations in environmental legislation, as well as the key issues of assistance and Federal enforcement. Moreover, particularly during the 1960's, when both Congress and the Executive Branch were controlled by the same political party, they together articulated a series of national policy goals which relied heavily on State and local governments, under close Federal supervision, to achieve objectives established at the Federal level.

Key actors who were early in influencing congressional acceptance of a larger Federal role in environmental policy included Rep. John Blatnik, chairman of the Public Works Subcommittee on Rivers and Harbors, and Rep. Ken Roberts, chairman of the Interstate and Foreign Commerce Subcommittee on Health and Science from 1959 through the period of the 1960's when the current Federal-State role was shaped.

Blatnik was an early supporter of a strong Federal role, particularly by proposing grants-in-aid for wastewater treatment plant construction in the 1956 act. During hearings held in 1958 on continuation and expansion of the program established in 1956, Blatnik expressed his concerns about the roles of Federal and State governments.

6/ Davies, J. Clarence III, and Barbara S. Davies. The Politics of Pollution. Indianapolis, Pegasus, 1975. p. 169.

> I will be very frank that I cannot understand how the Department [of HEW] that knows this problem better than anyone else can come in here saying that this program...should be turned back to the States, how you can recommend we go back to the situation of leaving this in the hands of the States and localities. They have always had it in their hands before this and it has given rise to this national problem of pollution in the first place. 7/

Roberts was not an early supporter of a strong Federal role, stating at a National Conference on Air Pollution in December 1962, "I do not think the Federal Government has any business telling the people of, say, Birmingham or Los Angeles how to proceed to meet their air pollution problems. That was made clear in the 1955 act." Yet by February of the following year, he had become a proponent of legislation containing Federal enforcement provisions. During hearings on that legislation, he expressed his changed opinion on the subject.

> I do not think [air pollution] is a problem that the Federal Government can say, "Well, it is strictly a State matter," because I do not know how you are going to be able to confine the air to one locality. Since we have, I think, a good many precedents for interstate viewpoint of this matter, it is certainly my feeling, and I think the feeling of a good many others in the Congress, that the Federal Government should do more than simply supply technical assistance and do all the research in this field. I think it is a growing health problem and I think you can see what is happening in some areas in this country and in many other areas of the world. 8/

On the subject of auto pollution, Rep. Paul Schenck, ranking Republican

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7/ Jennings, M. Kent. Legislative Politics and Water Pollution Control, 1956-61. In Cleaveland, Frederic N. Congress and Urban Problems. Washington, The Brookings Institution, 1969. p. 82. (Hereafter cited as Jennings, Legislative Politics and Water Pollution Control).

8/ U.S. Congress. House. Committee on Interstate and Foreign Commerce. Subcommittee on Public Health and Safety. Air Pollution. Hearings on H.R. 4415, H.R. 4750, H.R. 3507, and H.R. 4061, 88th Cong., 1st Sess., March 18 and 19, 1963. Washington, U.S. Govt. Print. Off., 1963. p. 116.

on the committee authored a 1960 law (the Schenck Act, P.L. 86-493) that called for the first Federal study of motor vehicle exhaust and sponsored legislation to prohibit emissions of unburned hydrocarbons and other auto pollutants.

In the Senate the early key figure was Senator Robert Kerr, chairman of the Public Works Committee's Subcommittee on Flood Control-Rivers and Harbors. Kerr strongly opposed a major role for the Federal government in either air or water pollution, and during the period of his leadership on the committee, he generally supported weaker versions of legislation than that produced by the House. 9/ During 1959 and 1960 Senator Kerr chaired a Select Committee on National Water Resources. In its final report the Committee recommended certain Federal actions to improve State and local planning but emphasized decisionmaking at non-Federal levels, due to the diversity of resource and institutional problems. 10/ However, Senator Kerr's death in 1963 resulted in changes on the Public Works Committee: chairman Pat McNamara created a special subcommittee to consider air and water pollution legislation, to be chaired by Edmund Muskie. Senator Muskie subsequently became perhaps the strongest congressional proponent of an active national interest in environmental protection. Others who were influential in the Senate included Gaylord Nelson and Abraham Ribicoff, who, as Secretary of HEW in 1961 and 1962, had presented the Kennedy Administration's proposals for Federal enforcement of air pollution.

3. Shift from "abatement" to "prevention" strategies. In the mid-1960's

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9/ Jennings, Legislative Politics and Water Pollution Control, pp. 100, 109.

10/ U.S. Congress. Senate. Select Committee on National Water Resources. Report, Pursuant to S. Res. 48. Report No. 29, 87th Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 1961. 147 p.

Congress and the Executive Branch rejected what had been the common approach to pollution problems--abatement--in favor of strategies based on prevention. The determination to shift from abatement to prevention was significant because, under the former policies, the Federal government's role was limited to offering technical assistance to States and localities. However, by endorsing pollution prevention, the Federal government began to expand its role into such areas as examining institutional arrangements needed to accomplish newer and broader policies.

Prior to that time, the policies in place emphasized using the maximum assimilative capacity of the air and waterways to dispose of manmade wastes and attempting only to limit pollution levels that might exceed the natural ability of the environment to absorb wastes and cleanse itself. In his 1965 State of the Union Message, President Johnson declared that the Administration would "seek legal power to prevent pollution of our air and water before it happens." 11/ Congress responded to that request by adopting policies that require prevention of pollution in both the 1965 Water Quality Act and the 1967 Air Quality Act. The Senate Public Works Committee noted the importance of that change.

> The Nation's air resources cannot be looked at as a limitless gift of nature which can be relied upon for the dilution, dispersion, and degradation of our wastes. This mistake was made with respect to our land and our water by looking upon all of our natural resources as a limitless gift of nature. The effect was to overestimate the capacity of our lands and our waters to cleanse themselves of man-made wastes, and man is now faced with the difficult task of restoring the quality of the lands and waters which he had neglected for so long. The necessary steps to protect and enhance

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11/ U.S. President, 1963-1969 (Johnson). Annual Message to the Congress on the State of the Union, Jan. 4, 1965. Public Papers of the Presidents of the United States. Lyndon B. Johnson. Jan. 1 to May 31, 1965. Washington, U.S. Govt. Print. Off., 1966. p. 8.

the quality of our Nation's air resources must be taken now, before the fact. 12/

(4) Institutional arrangements at the Federal level. Reflecting the early public health orientation towards environmental issues, Federal concern for those issues resided in the Public Health Service, part of the U.S. Department of Health, Education and Welfare (HEW), until the 1960's. This was significant because the philosophy of the Public Health Service was to prefer relying on local initiative and authority to abate pollution. It opposed expanding Federal activity beyond the research and technical assistance necessary to enable State and local governments to accomplish their own objectives. A larger Federal role could amount to enforcement which would disrupt the good relations between the Public Health Service and local governments in promoting public health. 13/ This philosophy (especially opposition to Federal enforcement) persisted among officials at the Public Health Service until two things occurred. The first concerned air pollution. In early 1963 President Kennedy recommended legislation to provide Federal grants-in-aid to State and local governments and to authorize Federal interstate air pollution abatement, after which the opposition of the Public Health Service ceased. 14/ The second concerned water pollution. In 1966 the Federal Water Pollution Control Administration (which had been

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12/ U.S. Congress. Senate. Committee on Public Works. Air Quality Act of 1967. Report to Accompany S. 780. Senate Report No. 403, 90th Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 1967. p. 10.

13/ Ripley, Randall B. Congress and Clean Air: The Issue of Enforcement. In Cleaveland, Frederic N. Congress and Urban Problems. Washington, The Brookings Institution, 1969. p. 233. (Hereafter cited as Ripley, Congress and Clean Air).

14/ Ibid., p. 247.

created within HEW one year earlier in an upgrading intended to strengthen the Federal program) was transferred from HEW to the Department of the Interior. Interior was less committed institutionally to relying on State and local efforts. 15/

By the time the Environmental Protection Agency was created in 1970, a strong Federal role in environmental policy had become well established. Legislative enactments after 1970 in these and newer program areas such as toxic substances, hazardous wastes, and drinking water have confirmed the Federal-State arrangements.

(5) Interest groups. Outside of Congress and the Executive Branch, during the 1950's and 1960's urban area interests were among the most organized in arguing for a stronger Federal role in environmental policy. 16/ Groups such as the U.S. Conference of Mayors, National League of Cities, and National Association of Counties have sought Federal financial support for construction of wastewater treatment plants and were even more active in urging strong air pollution control measures, because of the particular urban and interstate characteristic of air pollution problems. 17/

The interests of cities and State governments have sometimes clashed on the subject of expanding the Federal role in pollution control, and groups such as the Conference of State Sanitary Engineers have opposed

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15/ Davies and Davies, The Politics of Pollution, p. 34.

16/ Lobbying efforts by these groups on environmental issues are more fully discussed in Davies and Davies, The Politics of Pollution, pp. 80-102; Jennings, Legislative Politics and Water Pollution Control, pp. 72-109; and Ripley, Congress and Clean Air, pp. 224-278.

17/ Davies and Davies, the Politics of Pollution, p. 93.

Federal encroachment on State responsibilities or Federal efforts to deal directly with local governments.

Citizen groups have of course figured prominently in development of pollution control legislation. However, during the critical period in which current Federal-State relations were crafted, the role of these groups probably was not as great as were the activities of State and local public officials, particularly in pressing for commitment of Federal resources. This may partly be explained by the fact that established groups such as the National Wildlife Foundation and Izaak Walton League were organized initially over interest in conserving natural resources and preserving fish and wildlife. Formation of new groups explicitly concerned with environmental problems is more recent. 18/

Until the decade of the 1960's many industry groups favored locating primary responsibility for pollution control with State governments, partly because industry's importance to the local and State economy has constituted a powerful tool in bargaining over stringent environmental standard setting and enforcement. However, more recently many industrial interests that operate nationally, such as automobile manufacturers and chemical producers, have tended to favor a strong Federal role, administered consistently, in preference to the potential administrative inefficiency of meeting many different standards or requirements set separately by the States. (This subject is discussed more fully in the next section of this report.)

(6) Public opinion; general public awareness of the problem. A most important factor affecting both development of environmental policies and

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18/ Davies and Davies, The Politics of Pollution, p. 88.

an enlarged Federal role has been the growing public sensitivity to environmental pollution and its widespread effects on human health, welfare, and the economy. Specific episodes of illness and death related to air pollution in Donora, Pa., in 1948, and in London in 1952 and 1962 aroused both public and scientific concerns about the nature of air contaminants, their transport, and means of control. By the late 1950's there was confirmation of research by California scientist A.J. Haagen-Smit that motor vehicle pollutant emissions were the major contributers to photochemical smog in the Los Angeles area. Likewise, visible water pollution throughout the country generated pressure to increase public and private abatement efforts. Publication of Rachel Carson's Silent Spring in 1962 and other books and articles thereafter heightened public awareness of the seen and unseen damages to man and his environment resulting from widespread use of chemicals.

Perhaps the mood of the public in the mid-1960's, as reflected by Congress, is apparent in the following dramatic comments excerpted from supplementary views of Reps. Jim Wright, Kenneth Gray, Ed Edmondson, Richard McCarthy, John Schmidhauser, Robert Sweeney, and James Howard in a 1966 House Public Works and Transportation Committee report.

> The waters of America are severely, some of them very dangerously, infected. No region of the country is immune, and no major American stream today remains undefiled. In spite of our best efforts to date, the problem has grown faster than our solutions.
>
> Our Great Lakes are decaying, glutted with human and industrial filth, developing at their central cores vast liquid "deserts" (in the case of Lake Erie, 2,600 square miles) so sapped of oxygen that aquatic life is doomed. Merely to clean up the Great Lakes and restore their purity will require many years of intensified effort and an estimated $20 billion for this task alone.
>
> Last year, when the hot hand of drought closed a sweaty fist upon our northeastern seaboard, many communities could have been spared the privations of restrictive water rationing if their

> streams had been usable. The broad Hudson River, flowing uselessly through the heart of New York City, could have eradicated that city's critical water deficit entirely, had its waters been fit for consumption. But it was too foul to drink and too thick to purify. Four little children ate a watermelon fished from the Hudson and died.
>
> One cupful of water taken at random from the Connecticut River near Hartford was found to contain 26 different infectious bacteria, including typhoid, paratyphoid, cholera, tuberculosis, tetanus, and all the known viruses including polio. 19/

This growing public awareness contributed overall to efforts to expand pollution abatement programs but did not, in itself, signal the shift from local and State to Federal control.

Enforcement and Grants-in-Aid: The Major Legislative Issues

Two subjects, enforcement and financial assistance, dominated the legislative debate on environmental issues from the mid-1940's to the mid-1960's in connection with enlarging the Federal role. Concerns over the former relate to the extent to which States must authorize or give permission for Federal enforcement of pollution control. Concerns over the latter relate to the increasing degree of conditions tied by the Federal government to larger amounts of aid provided to State and local units of government, so that they may carry out national policies. Both issues have implications for the balance of powers within the Federal system.

Moreover, in both of these key areas, as well as in policymaking and standard setting, the Federal government has moved from a position of reliance on local and State control efforts to more direct involvement in order to achieve nationally determined goals and objectives. The question being

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19/ U.S. Congress. House. Committee on Public Works and Transportation. Water Pollution Control. Report to Accompany H.R. 16076. House Report No. 2021, 89th Cong., 2d Sess. Washington, U.S. Govt. Print. Off., 1966. p. 88.

asked today is whether that direct Federal involvement will eventually--or already has, according to some--significantly displaced State and local government initiative.

Tables I and II identify evolution of the enforcement and financial aid provisions in major Federal water and air pollution laws.

TABLE I

Major Federal Water Pollution Control Legislation
Development of Enforcement, Aid Provisions

	Enforcement	Financial aid for wastewater treatment plants	% Federal grant share of project costs
1948, Water Pollution Control Act (P.L. 80-845)	Federal jurisdiction for interstate waters; required consent of State in which pollution originates	Loans for treatment plant construction	--
1956, Water Pollution Control Act Amendments (P.L. 84-660)	Conference-hearing-court process for interstate waters	Grants for treatment plant construction; $50 mil annual authorization	30%, or $250,000, whichever was less
1961, Federal Water Pollution Control Act (P.L. 87-88)	Federal jurisdiction extended to navigable (intrastate) waters	$80 mil authorization in 1962; $90 mil in 1963; $100 mil annually in 1964-67	30%, or $600,000, whichever was less
1965, Water Quality Act (P.L. 89-234)	Federal-State standard-setting; streamlined enforcement process	$150 mil authorization in 1966-1967	(No change)
1966, Clean Water Restoration Act (P.L. 89-753)	Federal jurisdiction extended to international boundary waters	$450 mil authorization in 1968; $700 mil in 1969; $1 bil in 1970; $1.25 bil in 1971	Maximum 55%
1972, Federal Water Pollution Control Act Amendments (P.L. 92-500)	Federal effluent standards; Federal-State permit system	$5 bil authorization in 1973; $6 bil in 1974; $7 bil in 1975	75%
1977, Clean Water Act (P.L. 95-217)	State management of parts of construction grants program, dredge and fill permitting authorized	$1 bil authorization for 1977; $4.5 bil in 1978; $5 bil annually in 1979-82	75%; 85% in the case of projects using innovative/alternative technology

TABLE II

Major Federal Air Pollution Control Legislation
Development of Enforcement, Aid Provisions

	Enforcement	Financial Aid
1955 (no title) (P.L. 84-159)	--	--
1963, Clean Air Act (P.L. 84-206)	Conference-hearing-court process for interstate pollution	Grants to establish State and local air pollution control agencies in the amount of 2/3 of costs of establishing programs (3/4 of costs for regional agencies)
1965, Motor Vehicle Pollution Control Act (P.L. 89-272)	Federal regulation of new motor vehicle emissions	--
1966, Clean Air Act Amendments (P.L. 89-675)	--	Authorized maintenance grants for air pollution control agencies in the amount of 3/5 of costs of maintaining programs
1967, Air Quality Act (P.L. 90-148)	Federal-State standard-setting for air quality control regions; streamlined enforcement for interstate and intrastate areas	Reduced maintenance grants for non-regional agencies to 1/2 of agency costs
1970, Clean Air Act Amendments (P.L. 91-604)	National emission standards for hazardous emissions; national primary and secondary ambient air quality standards; Federal regulation of new industrial sources	(No change)
1977, Clean Air Act Amendments (P.L. 95-95)	Authorized sanctions for nonattainment of national air quality standards; administrative penalties for noncompliance with control requirements	(No change)

1. Enforcement. In the context of environmental policy debate, enforcement is generally considered to be governmental actions to assure compliance with standards and/or prohibitions, through administrative or judicial procedures. The consistent principle of Federal environmental legislation has been to rely on State and local enforcement of national policy objectives. Even among the most vocal proponents of a strong national interest in environmental protection, including Senator Muskie, few if any have failed to seek to protect the primary responsibility of State and local governments. By doing so, policy makers recognized both the limitations of Federal resources (States and localities will always have more resources available for day-to-day enforcement activities such as permit issuance and compliance monitoring) and respect for the federal tradition in the United States.

Under the early air and water pollution laws, the Federal enforcement function was subordinated to that of State and local governments. In the 1948 Federal Water Pollution Control Act (P.L. 80-845), the Federal government acknowledged the States' primary responsibility. Federal enforcement was narrowly limited to interstate waters and took place only with the consent of the State in which the pollution originated. While that act was a breakthrough in terms of Federal recognition of a national problem, it declared that pollution was best dealt with at the local level. States and localities were expected to initiate plans and activities to abate water pollution within their jurisdictions. It also established a multi-step process of public conferences, hearings, and ultimate legal action. In 1956 this act was extended (P.L. 84-660), and the basis was laid for future establishment of Federal sanctions: the Federal government was

given more authority to deal with polluters in interstate waters by undertaking enforcement either with the consent of the State in which the pollution originated or at the request of another State where the effects of pollution were felt. The conference and hearing procedures also were simplified.

Congress again amended the Federal Water Pollution Control Act in 1961; P.L. 87-88 extended Federal jurisdiction to the Nation's navigable waters, or intrastate waters, as well as existing coverage of interstate waters. By that action, Federal jurisdiction was extended from approximately 4,000 bodies of water--under the 1956 law--to nearly 26,000 waterways. Waters beyond the reach of the 1956 law had included much of the Great Lakes and their tributaries; many coastal streams; international boundaries such as the St. Lawrence, Niagara, Rio Grande, and lower Colorado Rivers; and all waters in Florida, Alaska, and Hawaii. 20/ The 1961 law required that in the case of intrastate water pollution, written permission of a State had to be obtained prior to initiation of legal action by the Attorney General.

This gradual expansion of Federal enforcement power occurred relatively easily. One reason for that was the greater degree of controversy focused on expanding the Act's wastewater treatment grants program during the same period. 21/ Moreover, because of the time-consuming and cumbersome procedures of conferences and hearings and the technical nature of the subject, Federal enforcement was not used often (34 enforcement actions were undertaken between 1956 and 1966) and, consequently, had limited success in

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20/ Jennings, Legislative Politics and Water Pollution Control, pp. 97-98.

21/ Ibid., p. 76.

abating pollution. 22/

The earliest air pollution law, enacted in 1955 (P.L. 84-159), was basically silent on the subject of Federal enforcement. However, by 1963 when Congress enacted the first permanent Federal air pollution control authority, the Clean Air Act (P.L. 88-206), it already had put enforcement precedents in place through amendments to the Federal Water Pollution Control Act. The issue of Federal enforcement of air pollution had been considered during congressional hearings beginning in 1958. Officials of the Public Health Service and the Department of Health, Education, and Welfare repeatedly opposed Federal enforcement powers for two major reasons: (1) the incomplete state of technology for controlling air pollution and (2) the philosophy of local responsibility for solving pollution problems. 23/ Others in the Administration, including the Bureau of the Budget, argued for giving State and local enforcement a longer trial period to prove itself before the alternative of Federal enforcement should be considered. 24/

President Kennedy's message on health in early 1963 recommended legislation to provide intensified air pollution research, grants-in-aid to State and local governments, and abatement powers similar to those in the water pollution program. By mid-1963 the House had passed a bill in response to that request, legislation which the Interstate and Foreign Commerce Committee

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22/ U.S. Congress. House. Committee on Government Operations. Metropolitan America: Challenge to Federalism, A Study Submitted to the Intergovernmental Relations Subcommittee by the Advisory Commission on Intergovernmental Relations. Committee Print, 89th Cong., 2d Sess. Washington, U.S. Govt. Print. Off., 1966. pp 53-54. (Hereafter cited as House Government Operations, Metropolitan America).

23/ Ripley, Congress and Clean Air, pp. 232, 234.

24/ Ibid., p. 247.

stated would provide "a reasonable balance between the primary rights of the States to control air pollution within their boundaries and the rights of States seriously affected by pollution from another State to have available to them a practical remedy." 25/ The Committee report justified the Federal participation authorized in the bill--as limited as it was--on the basis of "the seriousness of the air pollution problem and the need for more effective control" to protect public health and welfare. 26/

At that time the Senate Public Works Committee was holding hearings and considering a background report on air pollution that had been prepared by committee staff with assistance from the Public Health Service. Among the subjects addressed in that staff report was the variability of State and local air pollution programs. The report indicated that 33 States had some type of air pollution control laws, and 15 of these provided some control authority (the remaining 18 provided for only research and technical assistance or provided for local option to establish control programs). Depending on the meaning of "enforcement," between four and six States were said to be enforcing air pollution regulations, while local agencies were found to be placing greater emphasis on abatement activities. Fewer than 10 states did statewide air quality monitoring, and about the same number performed preconstruction review of new stationary sources of pollution. Only 17 States, the report said, were spending as much as $5,000 per year on air pollution programs. Only 34 local programs (out of 85) had annual budgets

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25/ U.S. Congress. House. Committee on Interstate and Foreign Commerce. Clean Air Act. Report to Accompany H.R. 6518. House Report No. 508, 88th Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 1963, p. 9.

26/ Ibid., p. 9.

of more than $25,000, and seven of those were in California. 27/

Legislation enacted in 1963 provided for Federal enforcement of interstate abatement of air pollution through a process of conference and hearings (like that provided for water pollution) and, in cases of intrastate pollution, allowed States to retain control to seek either technical assistance or to request legal action by the Federal government. During floor debate, Senator Muskie noted that "it has consistently been the intention of the committee to protect the primary areas of the States and local governments in this field." 28/

Nevertheless, auto pollution was seen as a problem requiring direct Federal enforcement. This occurred in 1965: P.L. 89-272, the Motor Vehicle Air Pollution Control Act, called for Federal regulation of emissions from new motor vehicles, preempting State or local standard setting except in California.

Also in 1965 Congress enacted new water pollution legislation, the Water Quality Act, which moved further in the direction of Federal involvement. First, the law established a "national policy" of controlling pollution, and, second, it originated the concept of water quality standards for interstate waters. Under this act, P.L. 89-274, States were responsible for setting standards within their jurisdictions, subject to Federal approval. However, if, after one year, a State did not file with HEW a letter of

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27/ U.S. Congress. Senate. Committee on Public Works. Special Subcommittee on Air and Water Pollution. Air Pollution Control. Hearings, 88th Cong., 1st Sess., Sept. 9-11, 1963. Washington, U.S. Govt. Print. Off., 1963. pp. 434-40.

28/ Muskie, Edmund. Remarks in the Senate. Congressional Record, v. 109 (part 17), Nov. 19, 1963. p. 22327.

intent that it would set such standards, the Secretary of HEW could then enforce Federal standards.

One year later the Clean Water Restoration Act was passed (P.L. 89-753), which extended Federal enforcement jurisdiction to international boundary waters. Despite urgings of the Johnson Administration to establish a regional approach to water pollution control, this act preserved the central role of the States in establishing water quality standards--the approach adopted in 1965. Violations of water quality standards would be subject to Federal abatement actions authorized under the law. The 1965 Water Quality Act also authorized direct Federal enforcement to abate pollution of interstate or navigable waters, where the pollution was preventing persons from marketing shellfish or shellfish products in interstate commerce.

In 1967 Congress enacted the Air Quality Act (P.L. 90-148) which reinforced the Federal-State partnership for environmental protection put in place by earlier air and water enactments. It required the Secretary of HEW to establish air quality control regions (atmospheric areas having common meteorology, climate, and topography) and criteria for clean air, as well as recommended control techniques. The States were made responsible for actual standard setting and implementation.

This Act extended Federal enforcement of air pollution situations to intrastate regions for the first time. The Attorney General was authorized to bring suit against a State that failed to enforce its air standards and, significantly, to bring an abatement action, without a prior conference or hearing, in an air pollution situation presenting substantial danger to health. (Once again, this direct authority for enforcing standards established pursuant to the Act paralleled what Congress had

provided in the 1965 Water Quality Act.) Nevertheless, under the 1967 Act States were primarily responsible for enforcement.

Moreover, in the Air Quality Act of 1967 Congress included policy language similar to that contained in the 1965 Water Quality Act, declaring that protection and enhancement of the quality of the nation's air resources is a purpose of Federal law.

The pattern of Federal involvement established by 1967 in the nation's air and water pollution laws thus had incrementally enlarged the Federal role itself, while requiring an interdependence among the Federal and State partners for establishing environmental criteria, specific quality standards, and procedures to enforce those standards. The trend towards centralization continued more strongly in the 1970's. For example, in reporting legislation on water pollution in 1971, the Senate Public Works Committee discussed the need for more Federal action.

> After five years, many States do not have approved [water quality] standards. Officials are still working to establish relationships between pollutants and water uses. Time schedules for abatement are slipping away because of failure to enforce, lack of effluent controls, and disputes over Federal-State standards. 29/

The 1970 Clean Air Act amendments (P.L. 91-604) moved further still in the direction of Federal control, by requiring EPA to establish national primary and secondary ambient air quality standards and directing States to adopt implementation plans that would assure attainment and maintenance of those standards. The Act also authorized EPA to issue specific national

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29/ U.S. Congress. Senate. Committee on Public Works. Federal Water Pollution Control Act Amendments of 1971. Report to Accompany S. 2770. Senate Report No. 92-414, 92nd Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 1971. p. 8.

standards governing emissions of hazardous air pollutants by stationary sources.

2. Grants-in-Aid. Similar to enforcement, there has been an accretion of Federal financial assistance to State and local governments for the purpose of achieving national environmental policy goals. To persons who today have difficulty in conceiving of life without such aid, it may come as something of a surprise to discover the controversy that has surrounded this issue.

Congress has authorized a number of categorical grant programs as part of the environmental protection laws, including project grants (potential recipients submit a specific individual application), formula grants (allocated according to factors in the law or administrative regulations; grants for setting up and/or maintaining State pollution control activities are typical), or mixed formula-project grants (a specified formula determines amounts allotted to States, while actual distribution is made by the States on the basis of project applications; the Clean Water Act wastewater treatment construction grants are typical). 30/ This section will discuss the growth of the categorical programs generally, rather than the specific types of grants themselves.

Prior to 1956 the major type of Federal assistance to States or localities for pollution control was technical: primarily research and information to enable those units of government to achieve their own objectives. While the 1948 Federal Water Pollution Control Act authorized loans for wastewater treatment plant construction, that program was never activiated due to lack of appropriations.

30/ U.S. Advisory Commission on Intergovernmental Relations. Categorical Grants: Their Role and Design. Washington, U.S. Govt. Print. Off., 1977. pp. 5-6.

The 1956 amendments to that law provided specific grants for such construction in the amount of $50 million annually for 10 years. Individual projects could receive aid in the amount of 30 percent of total costs, or $250,000, whichever was less. The Eisenhower Administration had opposed the grants program, as had a number of State health officers and water pollution control organizations. 31/ Many persons contended that the introduction of Federal grants in the water pollution field--although it was well established in other policy areas--would remove local initiative and control. With increasing Federal funding and involvement, it was argued, States and localities would become puppets of the national government through dependence on continuing financial support. Moreover, it was said that Federal subsidies would delay, rather than stimulate, pollution control investments, as cities could be expected to put off abatement efforts while waiting for Federal funds.

Yet, it was the failure of local approaches and inadequate investment in pollution control that created the initial concern. Ten years later the Advisory Commission on Intergovernmental Relations was still critical of the limited actions taken by local governments.

> Investments have been inadequate, particularly for sewage treatment facilities. Reliance on local responsibility for the supply of water and disposal of sewage has resulted in public health hazards, inefficient development of small facilities, and a failure to achieve economies of scale in utility development. 32/

Although President Eisenhower did not veto the 1956 legislation, the Administration's opposition to grants-in-aid continued, and in 1958 the President specifically requested that Congress discontinue the grants program.

31/ Jennings, Legislative Politics and Water Pollution Control, p. 76.

32/ House Government Operations, Metropolitan America, p. 36.

Since 1953 the Administration had taken the position that new grant programs or expansion of existing ones should be discouraged and that some Federal grant programs should be remanded to the States. 33/
However, by 1958 there was evidence that the available grants had increased wastewater treatment construction efforts, and some but not all State officials became supporters of the program.

In 1960 Congress passed water pollution control legislation containing an expanded grants program--H.R. 3610 authorized $90 million annually--but was unable to override a Presidential veto. Subsequent Administrations, however, supported increased annual authorizations for the construction grants program, as well as an increase in the percentage of individual project costs borne by the Federal share, which rose in 1961 to 30 percent (or $600,000, whichever was less), in 1966 to a maximum of 55 percent, and in 1972 to the current 75 percent.

While the water pollution legislation of the 1950's and 1960's also authorized grants to State and interstate agencies to assist them in meeting the costs of establishing and maintaining pollution control programs, these grant programs provoked considerably less controversy than the Federal construction grants program under the law (in part because the Federal outlay for program assistance was considerably less than that for construction grants).

Some differences and additional controversies have been associated with grants-in-aid for air pollution control, which were first authorized in the Air Quality Act of 1963 (P.L. 84-159). Distinctly different was the

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33/ Jennings, Legislative Politics and Water Pollution Control, p. 79.

fact that in the air pollution laws (and subsequent environmental enactments, as well), Federal funds have not been provided for constructing pollution control facilities. In the air pollution area, financial aid was intended to stimulate State and local program capability and assist their implementation of policies that increasingly were directed by the national government.

Together with increasing Federal involvement in air pollution standard setting and enforcement, grants-in-aid have implications for altering the rather delicate balance between recognizing the primary rights and responsibility of State and local governments and yet simultaneously providing effective national leadership. Some would argue that the conditions attached to financial aid and performance requirements of Federal law significantly reduce State and local initiative and ability to determine program priorities. In reporting its version of the 1963 legislation, the Senate Committee on Public Works anticipated, however, that grants would both encourage local program development and assist in maintaining a balance of national-State-local interests.

> The funds authorized to be appropriated...should operate, in the committee's opinion, to encourage local effort in financing new or expanded programs, or the improvements of existing programs....The committee believes that the primary responsibility for the prevention and control of air pollution should remain with the State and local governments and accordingly is convinced that the stimulation provided by the grant program will help to expand the local programs. 34/

Nevertheless, grants may also create two types of direct fiscal impacts of concern: (i) the impact of assistance programs on the Federal budget and (ii) impacts on State and local budgets through matching requirements

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34/ U.S. Congress. Senate. Committee on Public Works. Clean Air Act. Report to Accompany S. 432. Senate Report No. 638, 88th Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 1963. p. 8.

in the law and costs not met by Federal aid.

Second, the 1963 Air Quality Act made States the prime recipients of Federal assistance, whereas under the 1955 Air Pollution Act local governments generally had been the focus and recipients of that law's quite limited grants program ($5 million annually for agencies, as well as for research, training, and demonstration projects). 35/ The 1963 Act intended that grants to local governments be made with the concurrence of the State, in order to achieve coordinated statewide programs. 36/ This change in the early 1960's reflected policy makers' concerns about the inadequacy of purely local air pollution control efforts and the need to stimulate regional and State activities, yet in many cases it increased existing tensions between State and local governments, both of which are protective of their jurisdictional prerogatives. 37/

Third, a recurring question concerns the need or obligation of Federal grant programs to provide continuing aid, rather than merely assisting in the establishment of State and local pollution control programs. The 1963 Clean Air Act authorized grants for "developing, establishing, or improving" air pollution prevention and control programs, and in 1966 Congress specifically also authorized grants for maintaining such programs (P.L. 89-675). In reporting the amendment, the Senate Committee on Public Works discussed the need for this additional type of grant.

35/ Advisory Commission on Intergovernmental Relations, Categorical Grants: Their Role and Design, pp. 12-13.

36/ U.S. Congress. Senate. Committee on Public Works. Clean Air Act. Report to Accompany S. 432. Senate Report No. 638, 88th Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 1963. pp. 8-9.

37/ Davies and Davies, The Politics of Pollution, p. 170.

> The maintenance and continuation of expanded efforts by State and local air pollution control agencies will require in the future not only stimulatory great assistance but sustaining grants as well. Sustaining grants will more adequately reflect the strong Federal interest and responsibility in air pollution control and should significantly improve the effectiveness of programs in giving impetus to greater State and local action.
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> Although the existing program grants have had a beneficial effect, it is clear that Federal financial assistance, limited to short-term, stimulating grants, is not adequate to meet the need for effective and sustained State and local control efforts necessary to cope with the problem. 38/

That 1966 amendment authorized the Federal government to fund two-thirds of the costs of establishing an air pollution control program (or, in the case of regional or interstate agencies, three-fourths of the costs) and three-fifths of the costs of maintaining such programs. (The latter was reduced to one-half of program operating costs, for non-regional agencies, by the Air Quality Act of 1967, P.L. 90-148.) 39/

Federal Involvement: Pain or Pleasure?

Whether the increased Federal involvement in environmental protection policies and programs has been more good than bad is a subject of considerable current debate. The principal concern of critics appears to be that Federal involvement has usurped traditional decisionmaking powers of State and local officials and has led to deteriorating relations among the levels of government. In reality, the Federal role has probably resulted both in

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38/ U.S. Congress. Senate. Committee on Public Works. Clean Air Act Amendments. Report to Accompany S. 3112. Senate Report No. 1361, 89th Cong., 2d Sess. Washington, U.S. Govt. Print. Off., 1966. pp. 4-5.

39/ The Safe Drinking Water Act provides for the Federal government to support up to three-fourths of the costs of a State's public water system supervision and underground water source protection programs. Under other national environmental laws, including the Federal Water Pollution Control Act and Resource Conservation and Recovery Act, there is no fixed percentage of program costs paid by the Federal government; allotments are determined by the extent of the specific pollution problem in the State.

costs and benefits to States and localities.

Some persons contend that although the States may have lost some power, this has been offset by two factors: (1) since the States never had the power to control pollution originating outside of their jurisdictions, the Federal responsibility respecting interstate pollution has not come at the States expense; and (2) the larger Federal role may actually have resulted in greater power and authority at the State level, by having stimulated States to take on new responsibilities, including standard setting and enforcement, in response to national mandates. 40/ The Advisory Commission on Intergovernmental Relations agrees and recently commented on this fact.

> The Air Quality Act (of 1967) solidified the federal role as environmental protector. However, in expanding its own role, the federal government had not really impinged on the functional prerogatives of the 50 states. In fact, a more accurate assertion would be that the federal government had given to most states a function which they otherwise had chosen to ignore. Beginning with the Clean Air Act of 1963 state control over matters of air pollution had increased rather than diminished. The environment had become a shared function rather than a nonfunction. Perhaps the only "losers" had been the municipalities but, for the time being, these were grateful losers who viewed any steps toward uniform standards as a way out of their own economic/environmental dilemmas. 41/

Even viewed in such a positive manner, the growth in State environmental protection activities that resulted from Federal policies may renew older arguments about responsibilities and intergovernmental relations.

40/ Davies and Davies, The Politics of Pollution, p. 170.

41/ U.S. Advisory Commission on Intergovernmental Relations. The Federal Role in the Federal System: The Dynamics of Growth; Protecting the Environment: Politics, Pollution, and Federal Policy. Washington, Advisory Commission on Intergovernmental Relations, 1981. p. 15.

> As experience is gained with controlling pollution under strong federal leadership, the traditional virtues of state control are likely to reassert themselves. The uneven impact of uniform national standards on different regions will become more obvious, leading to demands for more flexibility in standard-setting. The red tape and bureaucratic confusion inherent in trying to exert federal control through the states will become worse. The utility of the states as agents of innovation may become more needed as the inadequacies of parts of the existing system become more clear. The greater familiarity of the state or local government with the polluters in their jurisdiction may come to seem more of a virtue as federally imposed solutions prove unworkable. In short, some of the old arguments for a decentralized system may carry more weight as the shortcomings of centralization become more clear. 42/

Indeed, these remarks about reasserting "the traditional virtues of state control" suggest what the next (or, perhaps, current) phase of the trend, or perhaps the cycle, in Federal-State relations may be. Having increased their capacity to carry out environmental management responsibilities, many States are seeking relief from continuous Federal oversight and day-to-day involvement in State decisionmaking. (This subject is discussed in Section III.)

42/ Davies and Davies, The Politics of Pollution, p. 223.

SECTION II: PARTICULAR PROBLEMS, THEN AND NOW

The preceding section described the evolution of Federal environmental policy from little or no Federal involvement with State and local activities to today's programs of significant Federal involvement in policymaking, standardsetting, and enforcement. This section further discusses two factors that contributed to development of Federal policy: (1) the need to take into account the regional and interstate nature of environmental pollution and (2) concern that uneven State and local control actions jeopardize economic equity and efficiency. The latter concern led to suggestions that nationally directed pollution control efforts could provide a needed measure of regulatory uniformity.

Environmental Pollution is not a Local Phenomenon

1. Political-technological contradictions. Environmental pollution presents a contradiction to the U.S. tradition of focusing decisionmaking responsibility at local levels of government, because pollution does not confine itself to politically-determined borders. Pollution control, which is a political decision to a significant extent, encounters difficulty when it is recognized that, from a technological or engineering viewpoint, pollution is not easily susceptible to local control efforts: pollution is no respecter of narrow political boundaries. Air pollution moves in masses of air; physical and chemical transformations occur in the atmosphere. Air pollution is more influenced by winds, vertical air currents, and temperature which disperse and concentrate pollutants than it is by the borders of a municipality.

Similarly, water pollution follows the pattern of river basins according to the geographic scheme of watershed systems. They also do not fit within the boundaries of a single locality. 43/

43/ For the purpose of assessing water and related land resources problems, the U.S. Water Resources Council has divided the Nation into (continued)

It is apparent that, viewed by technicians, problems of environmental pollution are not practically suited to political solutions by local governments alone. Then, if not purely a local problem, is pollution a State or a regional concern? Again, the engineer's or technician's response is likely to be no. The Nation's major river basins are multi-State in nature, as noted. Likewise, an air mass and its contents--while they are local in origin--in reality are part of the national and global atmosphere. 44/ Following the daily weather map provides vivid illustration of changes in the pattern of weather masses--and air masses: blowing west to east, northwest to southeast then perhaps northeast, in some cases. A mass of air also may settle over an area and become stagnant, resulting in an inversion in which high concentrations of pollutants are held close to the ground by the overlying air mass. In all such instances there is great likelihood that pollutants, whether natural or manmade, are carried with the air mass and are later deposited miles or hundreds of miles away from their source of origin. 45/

(continued) 21 hydrologic regions, 18 of which are in the continental United States. These regions are either the drainage area of a major river or large segment of a major river, or the combined area of a series or rivers. The Missouri River basin region, for example, consists of parts or all of 10 States.

44/ American Chemical Society. Cleaning Our Environment, A Chemical Perspective. Washington, American Chemical Society, 1978. p. 105.

45/ Solid and hazardous wastes may not be conveniently viewed as purely local environmental problems either. Incineration of solid wastes, one method of disposal, can itself generate air pollution concerns beyond a municipalilty's borders. Grad, Frank P., George W. Rathjens, and Albert J. Rosenthal. Environmental Control: Priorities, Policies, and the Law. New York, Columbia University Press, 1971. p.66. Recent evidence concerning waste disposal in landfill sites suggests even more alarming possibilities. Without adequate safeguards or encapsulation, wastes may leach through soil to underlying groundwater. Once in the groundwater, such wastes are difficult to treat, and they may be transported long distances until they encounter municipal and (continued)

One of the environmental issues slowest to reach national attention was noise pollution. Except for airport and jet engine noise--a situation (like automobiles) clearly affecting interstate commerce and in which the Federal government asserted a preemptive interest early--noise pollution apparently is a more localized problem. In fact, in most areas it has not been an issue of general State or local concern, with few laws or ordinances passed and little interest in enforcement, at least until enactment of the Federal Noise Control Act in 1972 (P.L. 92-574). 46/

2. Localities and States lack the powers to enforce pollution abatement at sources outside their jurisdictions. Municipalities do not have extraterritorial legal powers, and in practice each jurisdiction can only effect abatement of emissions or discharges from sources within its own borders. Water pollution is the classic example of this problem. A community that treats its own sewage adequately may be threatened by wastes discharged by an upstream community or nearby industrial polluter, over whom it has little or no control. Alternatively, an upstream source may pay all of the costs of pollution cleanup, while the downstream user, having paid no direct costs, receives all the benefits of cleaner water. Viewed either way, the limited jurisdiction of local governments creates a disincentive to take voluntary actions or invest in pollution control, and it raises certain questions of equity. Air pollution presents similar disparity between local costs and

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(continued) industrial wells and/or surface waters. U.S. Library of Congress. Environment and Natural Resources Policy Division. Resource Losses from Surface Water, Groundwater, and Atmospheric Contamination: A Catalog; a Report...of the Library of Congress for the Committee on Environment and Public Works, U.S. Senate. Committee Print, Serial No. 96-9, 96th Cong., 2d Sess. Washington, U.S. Govt. Print. Off., 1980. 246 p.

46/ Grad, Rathjens, and Rosenthal, Environmental Control, p. 70.

benefits: industrial development in one State or locality can create attainment problems in another. Industrialized metropolitan areas, which are the source of much manmade air pollution, have little incentive to abate emissions that may affect communities in another part of an airshed.

Jurisdictional limitations frustrate interstate as well as intrastate actions, with similar legal and political restrictions occurring. Air pollution is a somewhat special problem because of its interstate and urban character. During debate on the 1963 Air Quality Act, Rep. Ken Roberts stated that 38 million Americans, or more than one-third of metropolitan area residents, were living in areas that straddle two or more State lines. 47/ Thus, conflict or lack of cooperation between States may handicap pollution control efforts even within a single urban region. 48/

States are the creators of local government and have the ability to grant or withhold administrative and financial tools for solving many types of problems. In most States, if two or more local units of government seek to cooperate by jointly providing water or sewer services, for example, the State must enact the necessary legal machinery, a process which in itself may deter some local initiative.

There has been little experience with States attempting to get together to limit interstate pollution. The major mechanism for such intergovernmental cooperation is the interstate compact device, which was first used as a means

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47/ Roberts, Kenneth. Remarks in the House. Congressional Record, v. 109 (part 10), July 24, 1963. p. 13275.

48/ The 1967 Air Quality Act recognized the administrative and political difficulties of interstate pollution control by authorizing Federal grants for 100 percent of the costs of air quality program planning in such areas.

of deciding boundary disputes. Interstate compacts for pollution control have been used more to deal with water pollution than air pollution. In the several existing compacts, powers and authorities differ considerably. A few have standard-setting or enforcement powers (such as the Tri-State Compact of New York, New Jersey, and Connecticut; and the Ohio River Valley Water Sanitation Commission); others do not (Potomac River Compact); and still others have a combination of powers (New England Interstate Water Pollution Control Compact). The use of compacts is less tested in the air pollution field, in part because the 1967 Air Quality Act specifically called for designating air quality control regions in urban-industrial areas or where necessary for immediate pollution abatement, irrespective of political boundaries. This statutory requirement mooted the need for air quality interstate compacts. Overall, however, some persons suggest that interstate compacts represent the only workable device for regional pollution control management, short of general Federal controls, and should be encouraged in view of Federal unwillingness to assume total responsibility and State reluctance to surrender total responsibility for pollution control. 49/

The political question thus facing decisionmakers is, how to devise abatement and managment strategies that will effectively account for problems such as environmental pollution that are interstate in nature. By the 1960's there was greater recognition by policymakers of the national dimension of these problems--the severity of pollution and wide geographic areas affected--and the difficulties inherent in continuing to view pollution as a localized problem. Rather than affecting a limited few, pollution has

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49/ Grad, Rathjens, and Rosenthal, Environmental Control, pp. 145-56.

come to be seen by many persons as a nationwide problem acutely affecting the health and welfare of millions.

As described in the preceding section, by the early 1960's Congress endorsed the concept that the Federal government had some responsibility for dealing with these larger problems. Thus, in 1963 Rep. Kenneth Roberts reversed himself on the issue of a national air pollution program, saying to the House of Representatives, "I think this is both a State and a Federal problem. I do not think air stays in one State all the time....It moves across States lines." 50/

In 1961 the House Committee on Public Works reported legislation to amend the Federal Water Pollution Control Act, and in its report the Committee commented on the need to accelerate Federal efforts to halt interstate water pollution. "The seriousness of the Nation's water pollution problem makes it imperative that the Federal Government move as rapidly as possible in helping to solve what has become more than a local or State problem." 51/

Concerns about State and Local Efforts to Control Pollution

A second factor has contributed significantly to public support for a larger national role in environmental policy, in addition to recognizing the interstate nature of pollution. That second factor has been policymakers' concerns about the unevenness and lack of success of envi-

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50/ Roberts, Kenneth. Remarks in the House. Congressional Record, v. 109 (part 10), July 24, 1963. p. 13288.

51/ U.S. Congress. House. Committee on Public Works. Federal Water Pollution Control Act Amendments of 1961. Report to Accompany H.R. 6441. House Report No. 306, 87th Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 1961. p. 12.

ronmental protection activities by States and localities. 52/ To the extent that concern about variability of local pollution control efforts has been correct, it has raised questions about the economic equity of a system that permits stringent pollution controls to be enforced on some individuals and less stringent controls on others.

The concerns expressed about State and local governments encompass both their willingness and ability to control pollution.

1. State and local governments may have little interest in enforcing stringent pollution control. Competition for tax dollars is often cited as a reason that local governments have little incentive to invest in public facilities to curb pollution, such as wastewater treatment plants, or in resources to administer pollution control programs. 53/ Not surprisingly, there apparently is less reluctance when someone else pays part of the bill, in the form of grants-in-aid or special assistance.

In recent years before the Federal interest was enlarged, many States held the view that air pollution was more of an aesthetic nuisance problem than one of public health and is a highly localized problem at that. These States contended that air pollution arises largely from stationary sources in urban areas, and, despite its free flow, control had to be effected at those sources. As evidence of lack of State interest, before 1963 only 18 States had enacted some type of air pollution legislation, while nearly

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52/ Environmental pollution was one of a number of program areas that underwent significant centralization during the 1960's. Similar arguments about the disparity in treatment of individuals under such State-managed activities as public education were made to justify the need for greater Federal involvement.

53/ Davies and Davies, The Politics of Pollution, p. 157.

all States had other environmental legislation on the books, particularly dealing with water pollution. 54/

2. Competence of States and localities has been questioned. An additional question raised concerning efforts of many local and State governments is their technical competence and performance. Some policymakers believed that local and State governments are less sophisticated and have fewer resources--expert manpower and technical capability--to deal with such complex issues as environmental standard-setting. Moreover, some questioned the competence of local and State agencies. For example, a 1973 report by the General Accounting Office said, "In general, the States' enforcement programs were not effective in abating air pollution." 55/

During the 1960's and 1970's there was great variability among the States in terms of development of administrative arrangements and technical expertise. During 1963 Senate hearings on air pollution, the Chief of the Public Health Service's Division of Air Pollution, V.G. MacKenzie, commented on the efforts of State and local governments.

> Since 1940, our urban population has almost trebled...yet only half of our people in urban areas are currently served by local air pollution control programs.
>
> While there has been some improvement in State air pollution control activities, only 15 States now have legislation authorizing the conduct of comprehensive air pollution programs and of these, not more than 6 actually enforce the control of air pollution within their boundaries.
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> State and local expenditures to control the pollution of the Nation's air add up to only about $12 million a year, more than half of which is spent in the single State of California. This

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54/ Ibid., p. 158.

55/ U.S. General Accounting Office. Assessment of Federal and State Enforcement Efforts to Control Air Pollution from Stationary Sources. Aug. 23, 1973. p. 7.

> inadequate level of control activity by State and local governments does not result from a lack of knowledge about how to control air pollution emissions.
>
> Likewise, local efforts in air pollution control have not kept up with the need. A study in 1956 of 46 local air pollution control agencies revealed that they spent a median of 8 cents per capita annually in support of their activities.
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> Similar surveys in 1961 and 1962 of local programs revealed that expenditures had increased somewhat, but not enough to more than counterbalance increased salary and other costs. 56/

Certain States were early to recognize that environmental pollution problems would require government response and organized themselves accordingly, while many others were slower to act, for reasons ranging from budgetary restrictions and competition for funding among State programs to judgments that pollution was not severe enough to warrant governmental action.

Many States did, however, initiate their environmental quality and resource protection programs prior to greater expansion of the Federal role. Moreover, it is undoubtedly true that, as a result of the encouragement or prodding of Federal programs, today many States have greatly improved their technical competence. Yet the problem of variability may still exist among the States and in different program areas, as was noted in a 1977 report on several case studies of State program activities.

> There are several trends and patterns...First while a number of state and local governments are often touted as being in the forefront of the environmental movement--as being innovators--they are small in number. California, Colorado, and Vermont are among the leaders, but even in these states the state of the art is elementary. Their leadership is rather recent also, in that the environmental programs of the states mentioned have all been structured within the last few years. Several other states seem

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56/ U.S. Congress. Senate. Committee on Public Works. Special Subcommittee on Air and Water Pollution. Air Pollution Control. Hearings, 88th Cong., 1st Sess., Sept. 9-11, 1963. Washington, U.S. Govt. Print. Off., 1963. pp. 79-80.

> to be close behind in their reorganization efforts, but many more (perhaps, the vast majority) have not yet begun to indicate a recognition of the severity and pervasiveness of the problem. 57/

3. Economic rivalry among communities and States is a strong deterrent to stringent pollution control. Perhaps the greatest deterrent to local and State efforts to abate pollution--through enactment and enforcement of stringent programs--is economics. Davies has described this problem as it occurs at the level of local governments.

> In most communities the desire for clean air and water is weighted against the fear of losing out in the race to attract new business and industry and to retain the industries which have already located in the town. If a community sets more stringent control standards than its neighbors, the plant looking for a new location may choose one of the neighbors to avoid the cost of installing control equipment. 58/

Similarly, industry may have strong political influence at local and State levels to affect the outcome and/or pace of government's efforts to achieve compliance with established standards. At those levels of government--probably more than at the nationa level--polluters may have greater ability to negotiate, filibuster, and delay before entering into compliance. Since industries are important to local economies, they may have considerable bargaining power. This is likely to be especially true of marginal industries contending that the costs of compliance will force shutdown and local unemployment. 59/

The bargaining power of municipal and industrial polluters can be extensive at State government levels, also, where there is likely to exist

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57/ Magazine, Alan H. Environmental Management in Local Government, A Study of Local Response to Federal Mandate. New York, Praeger Publishers, 1977. pp. 61-62.

58/ Davies and Davies, The Politics of Pollution, pp. 162-63.

59/ Ibid.

a "not-so-delicate balance" of interests between environmental protection and economic development. Public officials are sensitive to criticism that State policies work against increased employment. 60/ It has also been said that, viewed from State capitals, environmental decisionmaking is more likely to be based on the political strength of economic power centers.

> The lack of precise economic guidelines on the cost of pollution and the economic benefits resulting from improved water quality increase the likelihood of basing State decisions largely on relative political influence. The obvious general benefits to health, recreation, conservation, property values, and general development usually do not generate concerted political activity. 61/

To the extent that States do vary in their willingness to impose pollution control and such differences are reflected in actual State policies, certain inequities between States may result.

Equity and Efficiency

The issue of competition and its effect on local and State willingness to impose vigorous environmental controls has led to support for the concept that national action is appropriate if particular communities or States are not to be penalized for undertaking pollution control programs. Facing compliance with local or State requirements, some industries may threaten to relocate. Such threats are made credible where environmental standards and levels of enforcement differ significantly. 62/ Yet, faced with nationally uniform requirements, while industry occasionally threatens to leave the

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60/ Council of State Governments, The. The Environment Comes of Age (State Environmental Issues). Lexington, The Council of State Governments, 1977. p. 26.

61/ House Government Operations, Metropolitan America, p. 144.

62/ Ibid., p. 48.

United States, there is little evidence that this actually occurs. 63/

Also related to interest in equity is recognition that the United States has operated increasingly on the basis of national markets for goods that are produced by large firms with plants located throughout the country. The growth of national and international companies during the 1970's signalled a shift in the pattern of industry seeking to focus authority with State and local governments, where the influence of business has been perceived as strongest. More recently, many in industry have argued for a strong Federal role, even if that meant more stringent regulation. 64/ The reason is not surprising: most national companies would prefer the predictability of complying with a minimum number of uniform environmental standards than facing the economically and administratively chaotic prospect of dealing with a variety of State and local requirements. Such regulatory uniformity is likely to bring about efficiency from the viewpoint of manufacturing firms, through consistent application of requirements affecting both production processes and facility siting.

Automotive air pollution control is a prime example. Although industry's concerns about regulatory uniformity began, in the case of auto emission standards, over performance or production process requirements, since that time industry representatives have raised concerns both about differing State product or performance standards and requirements affecting facility siting.

63/ During consideration of the 1977 Clean Air Act amendments, certain industries did threaten to relocate outside of the U.S., perceiving an inability to accomodate industrial growth with other national objectives such as clean air. See, for example, statement of Frank K. Armour, on behalf of the American Iron and Steel Institute in, U.S. Congress. Senate. Committee on Environment and Public Works. Subcommittee on Environmental Pollution. Clean Air Act Amendments of 1977. Hearings, 95th Cong., 1st Sess., Part 2, Feb. 10, 1977. Serial No. 95-H7. Washington, U.S. Govt. Print. Off., 1977. pp. 95-102.

64/ Davies and Davies, The Politics of Pollution, p. 171.

California enacted auto emissions legislation in 1959 and passed several progressively stricter laws thereafter. By mid-1965 the automobile manufacturers had announced that they would be able, through engineering modifications and application of control systems, to meet exhaust standards that had been required by California for vehicles offered for sale in the State beginning in model year 1966. Questions then arose as to the need for similar standards in other States (in view of the widespread occurrence of photochemical smog, largely attributable to the operation of motor vehicles) and whether such standard-setting should be done by other individual States or by the national government. Besides California, several other States had imposed or were considering auto emissions restrictions by 1965.

During Senate hearings in 1965, Administration witnesses were initially reluctant to support legislation authorizing establishment of national emission standards for autos, but James N. Quigley, assistant secretary of the Department of Health, Education, and Welfare did comment on the regulatory inefficiency of standards set independently by a number of States.

> I would say this: it is my personal judgment that the problem of automobile exhaust cannot be solved on a local or State basis. I would think, if I were in the automobile manufacturing business, that is absolutely the last thing I would hope to see happen where Delaware would pass this kind of legislation, and the District of Columbia this, and Maryland that, and Pennsylvania something else. You would go out of your mind, if you were trying to design devices or engines to meet these varying standards.
>
> I think clearly this is a growing national problem and the approach to it and solution to it must be across the Nation. 65/

In its report on the 1965 legislation, the Senate Public Works Committee noted the manufacturers' commitment to meet California's 1966 standards.

65/ U.S. Congress. Senate. Committee on Public Works. Special Subcommittee on Air and Water Pollution. Air Pollution Control. Hearings on S. 306, 89th Cong., 1st Sess., Apr. 6-9, 1965. Washington, U.S. Govt. Print. Off., 1965. p. 33.

> In view of the fact that the automobile is one of the principal sources of air pollution and manufacturers have the capability of incorporating air pollution reduction facilities in their vehicles, there is no apparent reason why the entire Nation should not benefit from such advances. Also, it would be more desirable to have national standards rather than for each State to have a variation in standards and requirements which could result in chaos insofar as manufacturers, dealers, and users are concerned. 66/

The automobile industry did not object strongly to the motor vehicle provisions of the 1965 legislation, partly out of greater concern for proliferation of State or regional approaches than for uniform Federal standards. 67/

In the 1967 Air Quality Act, Congress recognized California's early efforts to restrict auto emissions and allowed that State to continue with regulations stricter than Federal standards, while preempting the remaining States from enacting more stringent standards, so that manufacturers would not have to comply with many different State requirements. This preemption, first applied to mobile sources, was extended to fuel regulation and aircraft by the Clean Air Act amendments of 1970.

The prospect today of re-emergence of varying State standards, flowing from the Administration's proposed shift of responsibilities from the Federal level, has begun to concern some persons in industry. For example, Chemical Week recently noted that while the chemical industry has been focusing on Federal regulatory activities, there has been a virtual explosion of State legislative and regulatory activity.

66/ U.S. Congress. Senate. Committee on Public Works. Clean Air Act Amendments and Solid Waste Disposal Act. Report to Accompany S. 306. Senate Report No. 192, 89th Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 1966. p. 6.

67/ Davies and Davies, The Politics of Pollution, p. 48.

> All too often, industry is surprised at developments at the state level because they take place quickly, without advance notice, and sometimes without an opportunity for review and comment. [States] tend to forge ahead with regulations that at least some of them are ill-equipped to implement. Certainly, to date, many states have lacked the infrastructure essential for the administration, enforcement, and interpretation of regulations and standards affecting a large complex industry. 68/

Chemical Week cautioned that the industry may find itself "millioned and billioned" to death by State and local regulations.

> While the chemical industry may agree with the Reagan Administration on the principle of decentralizing the regulatory process, it will have to be alert to the dangers. It may even have to call for the judicious use of the federal right of preemption to bring about a sensible, complementary regulatory scheme. 69/

According to various State chemical industry associations, although a number of States have begun deregulation efforts (California, Arizona, Illinois, New York, Massachusetts, and several others), there is no apparent trend yet to lighten the regulatory load. An official of the Louisiana Chemical Association said, "As the federal government relaxes its regulations, we'd like the state to follow suit." 70/

It can be argued that regulatory efficiency and economic equity would require a high minimum level of consistency in approaching environmental standard-setting and enforcement, to prevent narrow interests from determining

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68/ Becker, William C. Out of the Federal Frying Pan. Chemical Week, v. 128, June 10, 1981. p. 5.

69/ Ibid. Concerns expressed by persons in the chemical industry also are raised in: The Pitfalls of "Defederalization." Chemical Week, v. 128, June 17, 1981. pp. 54-58; and, CMA Hears Uncertainty over Federal Preemption in "New Federalism." Pesticide & Toxic Chemical News, v. 50, no. 9, Nov. 4, 1981. pp. 46-47.

70/ Deregulation: The States are Chiming In. Chemical Week, v. 128, Apr. 15, 1981. pp. 27-28.

the direction and vigor of those efforts. Otherwise, such pressures may result in environmental protection that represents some "lowest common denominator." Furthermore, it would be hard to find equity where standards of permitted pollution were rigorous in one area while relaxed in a neighboring region--equity being jeopardized by the economic confusion that could result from competition to maintain or enlarge the local tax base, and by the injury to residents whose health and welfare might suffer from substantially different environmental standards.

The history of Federal environmental policy reflects concern among Federal officials that the nature of the pollution problem and the desire for administrative efficiency have, at least until now, supported arguments that some degree of uniformity is essential and may be best achieved at the national level. The pursuit of uniformity also has led, since the 1960's, away from principal reliance on strategies that focus on ambient water or air quality standards towards more specific technical emission or effluent control standards for existing and new sources of pollution.

Through legislative enactments Congress has expressly declared a national purpose for these programs and has enlarged Federal responsibility for policymaking and standard-setting, while locating primary implementation and enforcement functions with State and local governments. Some persons would suggest that such a splitting of responsibilities is largely a pragmatic solution to the problem of the Federal government lacking the necessary resources and manpower for enforcement activities.

Control of environmental pollution today--like all governmental activity—does not break down into neatly defined divisions of labor between local, State, and Federal levels. Functions and tasks are intended to be

carried out by cooperative interaction. In that sense, the traditional concept of American federalism, in which the national and state governments were seen as essentially separate or independent sovereignties, 71/ has evolved into a system of interdependence and mutual leverage in which the national government is basically dominant, while States and localities retain sufficient political strength to participate in the design of programs and to exercise discretion in implementing federally funded programs. 72/

The next section of this report discusses concerns of some persons in State government that, at least in areas of environmental programs, the States may have much less leverage and discretion than they desire or than theories of intergovernmental relations would suggest.

71/ Sundquist and Davis, Making Federalism Work, p. 7.

72/ Reagan, Michael D. The New Federalism. New York, Oxford University Press, 1972. p. 145.

SECTION III: PROBLEMS AND INTERGOVERNMENTAL TENSIONS RESULTING FROM CURRENT ENVIRONMENTAL PROGRAMS

State and local governments today face demands that they implement many programs created by Congress in various policy areas. On top of the early air and water quality programs have come programs to contend with toxic substances, noise control, solid and hazardous waste, and pesticides. Each of these programs requires considerable State and local expenditures in order to carry out the Federal mandates. However, the accumulation of these Federally-based requirements has led to a feeling among many in State and local governments that "there has been a change from the cooperative federalism of the pre-1960's to a more conflictual or coercive federalism today." 73/

Alan Magazine, Deputy Assistant Director of the Commission on Federal Paperwork, notes that environmental pollution is one of a few policy issues well suited to Federal involvement, but he wonders if the intergovernmental conflicts that have resulted from national programs could have been avoided or might now be eased.

> Under our federal system, Congress is supposed to deal with problems of national concern. There are few better examples than pollution. The important question, however, seems to be: in the past, could it have been, and can it be in the future, handled in a more equitable and reasonable manner? Is it necessary for Congress to allow--in fact, worsen--the hostilities that exist between levels of government in order to bring about quick changes? Is it necessary to use the big stick, to be coercive, in dealing with state and local governments in order to solve environmental problems? 74/

In the environmental area, complex administrative problems, confusion, and conflict have occurred among the levels of government and within the Federal bureaucracy itself because of the piling on of specific Federal mandates, plus other general and across-the-board requirements such as envi-

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73/ Magazine, Environmental Management in Local Government, p. 15.

74/ Ibid., p. 93.

ronmental assessment, equal employment opportunity, wage rates, and access to government information. Added to that load are enactments by the States of their own enabling legislation. 75/

Current Problems Resulting in Intergovernmental Tensions

The States' complaints about current Federal-State relations in environmental policy fit into three major categories: (1) the piecemeal emergence of policies and programs has resulted in overlapping jurisdictions and contradictory standards; (2) Federal regulation is inflexible, even in areas where program delegation to qualified States has occurred, thus constraining efforts to tailor national programs to local and regional conditions; and (3) Federally mandated programs impose a heavy financial burden on State and local governments. 76/ Each of these is discussed below. In the view of many State officials, most of these problems could be resolved administratively and do not necessarily require legislative change.

1. Overlap and contradiction. The ability of States and localities to manage the environment is hampered by fragmented responsibility among the levels of government. Ironically, much of the confusion stems from the basic governmental partnership arrangement: duality or sharing of responsibilities for some programs, but not others; Federal powers that have been partially delegated to qualified States; and duplication of efforts.

The latter problem--duplication--occurs in part because of the many Federal, State and local groups concerned with environmental protection. At the Federal level every department and agency has at least some respon-

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75/ Advisory Commission on Intergovernmental Relations, Categorical Grants, p. 5.

76/ Council of State Governments, The Environment Comes of Age, pp. 10-16.

sibilities, because of environmental impact assessment requirements. The same is true at State levels. The State of Minnesota, for example, has nearly 50 agencies, boards, commissions, and committees that deal with environmental matters. 77/ Separate (Federal and non-Federal) permitting and environmental assessment procedures also increase the potential for legal challenges.

In the regulatory area, the U.S. Environmental Protection Agency (EPA) recently attempted to resolve some problems of overlap and duplication by issuing consolidated permit rules for five programs. 78/ The rules were intended to simplify permit application processes and clarify procedures for State assumption of permit responsibilities. However, when EPA promulgated the consolidated rules, 79/ public response was quite mixed. States and industry groups contend that the result has actually been greater regulatory confusion and administrative burden, less harmony among programs, and increased rigidity, rather than the desired flexibility. A number of States were reported to have objected that they already have consolidated permit programs in operation and to replace those adequate programs with a new Federal one would lead to confusion and more permit delays. 80/

77/ Magazine, Environmental Management in Local Government, p. 95.

78/ Hazardous wastes under the Resource Conservation and Recovery Act; Safe Drinking Water Act underground injection control; Clean Water Act dredge and fill permits and National Pollutant Discharge Elimination System program; and Clean Air Act prevention of significant deterioration program.

79/ U.S. Environmental Protection Agency. Consolidated Permit Regulations. Federal Register, v. 45, no. 98, May 19, 1980. pp. 33290-588.

80/ Kish, Tony. EPA Consolidation of Permits Proposal--Regulatory Workhorse or Bureaucratic Nightmare? Journal of the Water Pollution Control Federation, v. 52, no. 2, February 1980. p. 233.

Similar complaints have been voiced about the State/EPA agreement (SEA) process, intended to coordinate efforts for resolving water pollution, drinking water, and solid waste programs. While they approved of the concept, some States feared that the SEA process would force some to reorganize internally and would increase paperwork and redtape. 81/

From time to time Congress has considered proposals to integrate Federal and State environmental reviews and permitting or to formalize a process in which a single environmental review would be considered adequate for Federal, State, and local purposes. The Energy Mobilization Board legislation of the 96th Congress (S. 1308, H.R. 4985, H.R. 4988) would have endorsed such an arrangement for a single environmental impact statement if all Federal, State, and local requirements were met.

A closely related concern is Federal control coming in forms other than regulations, such as:

(a) Program requirements memoranda (PRMs) which transmit mandatory policy and, according to the States, have the force of regulations while being outside the regulatory process;

(b) Detailed conditions attached to assistance grants that allow little or no flexibility to set priorities; and

(c) "Guidance" for development of State/EPA agreements that gives no opportunity for voluntary compliance. 82/

2. Inflexible Federal regulation. According to the GAO and others, the strain in Federal-State environmental relations is due largely to the

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81/ A recent General Accounting Office report examines the obstacles that States face when implementing Federal environmental laws. Cf. U.S. General Accounting Office. Federal-State Environmental Programs--The State Perspective. Washington, 1980. (CED-80-106, Aug. 22, 1980) 95 p. (Hereafter cited as GAO report).

82/ GAO report, pp. 51-55.

perception that EPA exerts excessive and detailed control over States. The problems include:

-- National standards and regulations that fail to account for differences among States and frustrate efforts to design implementation plans that are sensitive to local needs. This problem results from EPA's issuance of regulations that go beyond specifying a desired policy outcome. Rather, say the States, the rules specify the methods for achieving the outcome. GAO reports that a number of States (Wyoming, West Virginia, Virginia, Pennsylvania, Oregon, Maryland) are uncertain whether they will administer a hazardous waste management program under the Resource Conservation and Recovery Act, out of concern that EPA's requirements will be too inflexible. The State of Alaska already has decided not to administer such a program. 83/

--Excessive Federal oversight and day-to-day control. A major complaint by the States is the Federal government's tendency to exercise detailed involvement in State programs, even where delegation has occurred. It is wasteful of Federal and State resources to continue such day-to-day control as dual signing off on nearly every environmental permit.

States contend that there is little point to program delegation if it does not, in fact, take place. They argue that their capability to administer these programs has increased substantially and no longer requires day-to-day involvement. If a policy of using Federal audits to check for consistency with overall objectives were adopted instead, they say, the Federal officials relieved of day-to-day oversight could provide tech-

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83/ GAO report, p. 47.

nical assistance that the States do need.

These types of complaints are common--but in no way restricted to--the air quality program. (The Association of State and Interstate Water Pollution Control Administrators, for example, recently faulted EPA for continuing involvement in the NPDES program.) 84/ Current consideration of changes to the Clean Air Act includes requests that EPA's review of State Implementation Plans (SIPs) be generic in nature rather than the current review of individual site-specific SIP revisions.

Nevertheless, while States generally would welcome the opportunity to function without such close Federal supervision, many persons are reluctant to reduce Federal involvement and oversight drastically. Their concerns range from the need to account for Federal grants funds to a desire to ensure consistency with the Federal program, as well as lingering doubts about the competence of some States.

On the subject of enforcement, States assert that the Federal government has a tendency to move too quickly into adversarial proceedings; many States prefer to attempt to negotiate compliance by polluting sources before entering into formal enforcement. Conversely, other observers of Federal-State relations contend that, while EPA is less deferential to States than were the Departments of Health, Education and Welfare or Interior when they were responsible for pollution control, the primary purpose of Federal enforcement is to prod States and localities into taking action. EPA's initiation and prosecution of legal enforcement is limited by statutes and

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84/ States Say NPDES in "Serious Jeopardy" Unless Significant Reforms Instituted. Air/Water Pollution Report, v. 19, no. 43, Nov. 2, 1981. p. 427.

practical necessity (including manpower) to relying on State and local enforcement and voluntary compliance by sources. 85/

Despite these types of concerns, the GAO recently indicated that more than 80 percent of State program directors that they questioned described their relationship with EPA staff--particularly at the EPA regional level--as good or very good. State officials were more critical of personnel at EPA headquarters, however. 86/

3. Financial burden. Other Federal-State problems related to funding occur. Administration of environmental programs impose costs on State and local government (planning, monitoring, enforcing, etc.), which are seldom mentioned as a factor in evaluating regulatory programs. Thus, grant or other assistance to support these activities can be important. (Further discussion of this issue can be found in Section IV.) Due to the uncertainty of future Federal funding (both levels of assistance and timing of delivery), State program management and planning are made difficult. Similarly, States cannot attract and retain qualified staff for new as well as established programs. 87/

These problems of Federal support have been noted in connection with delegation of the Clean Water Act construction grants program. Prior to 1980 amendments to that Act (P.L. 96-483), the level of funds for States with construction grants delegation under section 205(g) had been based on appropriations, rather than authorizations for the grants program. Cali-

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85/ Davies and Davies, The Politics of Pollution, pp. 212-14.

86/ GAO report, pp. 12-16.

87/ Council of State Governments, The Environment Comes of Age, p. 15.

fornia and other States said that, because of fluctuating annual appropriations, they were unable to anticipate resources for staffing purposes. 88/ To provide more predictability, the 1980 amendments to the Act linked section 205(g) assistance to the level of authorized waste treatment grant funding. 89/

Can the States Be Forced to Carry out Federal Programs? 90/

Few issues in environmental protection arouse emotions more effectively than the issue of Federal coercion of States to carry out detailed Federal directives. Though the question is on its face a purely legal one, the constitutional analysis involved is inescapably shaped by philosophical notions as to the proper balance of Federal and State power.

Federal pressure on States to cooperate with Federal environmental programs has been exerted in at least four different ways.

1. Conditions on Federal benefits. Perhaps the most frequently employed technique by which the United States seeks to induce State cooperation with national programs is the use of preconditions to the receipt by States of various forms of Federal assistance. A recently controversial example is section 176 of the Clean Air Act, requiring cutoff of grants under that Act and of certain highway construction funds, where States fail to adopt certain specified nonattainment area measures within time periods required under the Act. It is well settled that Congress "[has] power to fix the terms upon which

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88/ U.S. Congress. House. Committee on Public Works and Transportation. Subcommittee on Overisight and Review. Implementation of the Federal Water Pollution Control Act (The Municipal Construction Grants Program and the State Management Assistance Program). Hearings, 96th Cong., 1st Sess., Oct. 30, 31, Nov. 1, 1979. Washington, U.S. Govt. Print. Off., 1980. pp. 907-909.

89/ Public Law 96-483, Clean Water Act Amendment, section 11.

90/ This section prepared by Robert Meltz, Legislative Attorney, American Law Division, Congressional Research Service, Library of Congress.

its money allotments to States shall be disbursed." 91/

2. Moratoria on private activities. A Federal ban on private economic activity of a certain type until such time as a State acts in accordance with Federal desires can be a powerful source of political pressure on a State to so act. The Clean Air Act again provides an example: section 110(a)(2)(I) bans the construction of major stationary sources of a pollutant in an area exceeding the national ambient air standard for that pollutant, until there is a nonattainment plan in effect.

Litigants challenging section 110(a)(2)(I) sanctions (and those under section 176, as well) have argued that they "threaten economic havoc" for a State and effectively coerce State lawmaking in order to terminate the sanction. 92/ However, the Supreme Court has recently explained that the Tenth Amendment's protection against Federal encroachment on State sovereignty is infringed only where the Federal rule:

(a) regulates the States as States,
(b) addresses matters that are indisputably attributes of State sovereignty, and
(c) directly impairs the State's ability "to structure integral operations in areas of traditional functions." 93/

It is difficult to argue that sanctions such as those in sections 110(a)(2)(I) and 176 of the Clean Air Act infringe these Tenth Amendment criteria.

3. Threat of Federal promulgation of plan, Federal assumption of enforcement, or Federal takeover of program. Many environmental statutes

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91/ Oklahoma v. Civil Service Comm'n, 330 U.S. 127, 143 (1947).

92/ Mtn. States Legal Fdn. v. Costle, 630 F.2d 754, 764 (10th Cir. 1980) (no ruling on the merits because standing denied).

93/ Hodel v. Virginia Surface Mining & Reclamation Ass'n, 49 U.S.L.W. 4654 (June 15, 1981).

authorize such Federal measures where a State's performance of its duties under a federally mandated program is found to be inadequate. In Hodel, supra, the Supreme Court emphatically rejected the arguments that the threat of usurpation of a State's regulatory role in such circumstances coerces the State into enforcing the act, and that a statute regulates the States as States (criterion "a" above) merely because it sets minimum Federal standards for a program where State participation is voluntary. The Tenth Amendment is not violated, said the Court, merely because Congress exercises its commerce clause power over private activity in a manner that displaces State police powers.

4. Direct coercion of States. The use of civil or criminal penalties against State governments and officials as a means of inducing cooperation with a Federal program is the most legally and politically sensitive of the techniques noted here. The issue has been litigated extensively only under the Clean Air Act.

At the outset, courts are split over whether the Act authorizes direct enforcement against States, where the State itself is not a polluter. Where courts have found statutory authorization, the constitutional question arises as to whether the Tenth Amendment permits such naked exercise of Federal commerce clause power against the States. National League of Cities v. Usery articulated the rule that Federal interference with the "integral governmental functions" of a State violates the Tenth Amendment; the United States may not exercise power so as to impair a State's ability to function effectively in a Federal system. 94/

94/ 426 U.S. 833 (1976). Compare United States v. Ohio Dep't of Highway Safety, 15 ERC 1273 (6th Cir. 1980) (Tenth Amendment not violated where EPA seeks merely to compel State to deny use of State-owned highways to cars not passing inspection/maintenance test; EPA may enforce directly against the State).

tion effectively in a Federal system. 94/

Where the State is iceself a polluter, as when it owns an incinerator or powerplant, there is little doubt that the Clean Air Act authorizes direct sanctions against States, and that no constitutional proscriptions are thereby violated. Here the State is operating in a proprietary, rather than governmental, capacity and is treated the same as a private entity.

State-Local Relations

Problems exist in State-local relations, as well as between Federal and State governments, in the implementation of national environmental policies. Indeed, descriptions of conflicts between local and State government often sound similar to those expressed by States in trying to work with the Federal government. 95/

—Although regulations may be imposed by the Federal agency, localities often nominate the State as the real culprit in their problems. From the local perspective, State agencies are frequently viewed as being inflexible by refusing to give them adequate consideration in enforcing State-set standards and review procedures or not allowing them to tailor programs sufficiently to meet local needs.

—Some local governments insist that the monitoring and enforcement requirements of environmental quality programs impose heavy local burdens, the costs of which generally cannot be passed on to consumers. Where State aid is sought to comply with these requirements (only a few States provide funds for local programs), it frequently comes at the "price" of some State preemption of local authority.

95/ Council of State Governments, The Environment Comes of Age, pp. 12-16.

On the other hand, some State governments hesitate to rely on local governments. The locality is seen to be part of the problem in attempting to enforce policies, because of the greater possibility that local government will be lenient with major polluters who are important sources of jobs and taxes.

In development of national environmental policy, an issue of continuing concern to municipalities and local governments has been their desire to deal with the Federal government as directly as possible, without the intervention and prior approval of State governments. Local governments have argued strenuously for direct funding of certain grant-in-aid programs, such as the Clean Water Act areawide waste management planning program (section 208). Localities assert that they can make a better case for their funding needs directly to the Federal government, while, if grant allocations are made to the States for distribution to localities, the States are unlikely to be the best judges of local needs. In 1963 Senate hearings on air pollution control legislation, Chicago Mayor Richard J. Daley expressed this concern in opposing changes to the law's then-current policy favoring grants-in-aid to local governments.

> It is the local air pollution agencies which are carrying on most of these programs--which have most of the know-how and which are most directly concerned.
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> We feel the bill should be made explicit so that greater participation of the local agencies and the Secretary [of HEW] is made possible.
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> Further, the allotments are made directly to the States but it is the local air pollution control agencies which have the greatest need. 96/

96/ U.S. Congress. Senate. Committee on Public Works. Special Subcommittee on Air and Water Pollution. Air Pollution Control. Hearings, 88th Cong., 1st Sess., Sept. 9-11, 1963. Washington, U.S. Govt. Print. Off., 1963. pp. 104-05.

States object to program arrangements in which the Federal government directly assists local governments (especially in the form of financial aid), arguing in part that under such circumstances Federal programs tend to prescribe highly specific local actions, to the detriment of balanced relations among the national-State-local participants in the federal system. 97/ Moreover, in some past cases State officials have opposed proposals to place greater authority with local governments out of concern that such actions would induce an all-out urban focus to national policy. In many States the conflicts between State and local governments are more accurately viewed as tensions between rural and urban-metropolitan interests. 98/

97/ House Government Operations, Metropolitan America, p. 119.

98/ Sundquist and Davis, Making Federalism Work, p. 262-67.

SECTION IV: THE STATES' VIEWS ON PROBLEMS RESULTING FROM NEW ENVIRONMENTAL RESPONSIBILITIES

This section discusses the views of a number of State program officials on the general subject of new problems that may arise by decreasing the Federal role and increasing the role of States in managing environmental programs. The material is based in part on discussions with individuals and officials of the national groups that represent the State air and water quality, solid waste, and drinking water programs. (See Appendix)

The preceding sections have discussed how the States have come to be partners in centralized environmental policies, under strong Federal leadership. The last section discussed problems affecting intergovernmental relations that have arisen to date under the current programs. Now, in view of discussions about altering the existing intergovernmental partnership, some persons in State government are examining new problems that may arise as changes occur. Their hope is that, by discussing the implications of change, it will be possible to mitigate adverse effects before they occur or, if necessary, to implement more limited changes.

The more recent concerns of State officials about changing the pattern of Federal-State relations are of two types. The first centers on conceptual issues, such as the need to define the proper Federal and non-Federal roles in environmental policy and the implications of changes on program continuation and enforcement. Today this set of issues is somewhat theoretical, due to the general lack of details concerning how changes would be made. Pending administrative or legislative actions, it is really only possible to speculate about impacts in specific program areas or on individual States. Yet the very lack of details appears to trouble State officials; fearing the unknown, some tend to anticipate the worst.

The second type of concern raised by State officials revolves around more concrete considerations. These include factors such as the timing of making proposed changes and adjustments to be made by the States.

This section, then, discusses these two types of new concerns, first, conceptual problems and, second, practical considerations.

Budget Cuts and Taxes: Broad Concerns about New Federalism

Governor George Busbee of Georgia, past-chairman of the National Governors' Association, recently inquired about what has happened to the partnership between Federal and non-Federal levels of government, in view of the fact that since January 1981 the States have not been fully consulted on developing "an orderly and rational agenda for the transfer of governmental functions and resources while minimizing the impacts of necessary federal [budget] cuts." Governors, State legislators, and taxpayers need to ask some basic questions now, he said.

> What is the Reagan administration's philosophy of federalism? Does federalism just mean that states and localities should absorb all excess federal costs that stand in the way of balancing the federal budget? What are the government functions the administration considers primarily federal, to balance against the list of responsibilities it wishes to shift to the states? 99/

The combined effect of recent Federal budget cuts and changes to the tax laws is tightening the squeeze on State and local governments that began gradually a decade ago. The cuts in Federal assistance in all program areas amount to about $7 billion between 1981 and 1982 (or, an estimated 25 percent reduction, after adjustment for inflation), plus the effect of reduced business tax revenues and higher borrowing costs, which the National Governors'

99/ Busbee, George. Where is that Federal 'Partnership?' The Washington Post, Sept. 24, 1981. p. A19.

Association has estimated will cost the States $2.3 billion in 1982. The latter will occur because many State tax systems are linked to Federal tax law. 100/ Calculating the impact of changes already made, plus a possible second round in the near future and additional uncertainties for future years, States and localities fear that with significantly reduced help from Washington, they may be unable to fulfill their role in achieving economic recovery nationwide. 101/

Cuts in Federal assistance so far have affected other program areas more adversely than environmental programs, but there could be a ripple effect on environmental protection efforts. Most of the recent cuts have been in social services. Since States and localities can be expected to stretch remaining dollars to replace life-support services as a first priority (fire, police, health, sanitation), it is unlikely that they will shield environmental programs from spending cutbacks.

Early Indications from the Reagan Administration

Today State officials are awaiting policy statements from the Reagan Administration to detail, rather than merely outline, the Administration's view of new federalism as applied to environmental programs. In general,

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100/ Discussion of these effects on State and local governments can be found in several recent reports, including: State and Local Government in Trouble. Business Week. Oct. 26, 1981. pp. 135-81; and Evans, Ross. State, Local Officials Assess Void Left by Budget Cuts. Congressional Quarterly, Oct. 24, 1981. pp. 2047-51.

101/ See Business Week special report, in particular. Concerns about State and local governments and the effects of new federalism also are discussed in: Ayres, B. Drummond, Jr. Key Supporters of Reagan Assail His Concept of "New Federalism." New York Times, Dec. 2, 1981. p. B9; Mouat, Lucia. U.S. Mayors are Wary of "New Federalism." The Christian Science Monitor, Dec. 3, 1981. p. 1.

the Administration's intentions apparently are to place primary responsibility with the States and decrease Federal involvement significantly. It is the specifics of transferring program responsibility from Federal to State levels that greatly interest State officials.

One early indication did come in the form of budget changes for Fiscal Year 1982. As part of its overall revisions of the Carter budget, the Reagan Administration proposed to phase out the Federal noise control program by the end of FY82 and shift environmental noise control responsibility fully to State and local governments. Documents justifying the budget changes said that the phaseout was based on "determination that the benefits of noise control are highly localized and that the function of noise control can be adequately carried out at the State and local level without the presence of a Federal program." The FY81 noise control program had been funded at a level of $12.9 million, and $5.3 million of that represented State and local assistance grants for developing and implementing noise control programs. For FY82 the Administration requested only $2.3 million, intended to close down the regulatory program and to complete health effects research and technological demonstrations, and no State assistance funds for noise control programs.

In legislative terms, the main expression of the new federalism philosophy, so far, has come in the form of Administration proposals to reform the Clean Water Act construction grants program. According to Administration spokesmen, those proposals (S. 975 and H.R. 3703) are aimed principally at two targets: (1) limiting the potential Federal commitment to wastewater treatment plant construction by restricting projects eligible for Federal support, thus reducing the long-term so-called "Federal exposure" to about $23 billion, compared with $90 billion under current law; and (2) limiting

Federal support to wastewater treatment projects required for eliminating the Nation's backlog of substantial water pollution problems to projects that will have significant public health or water quality benefits. (In early December congressional conferees approved legislation to reauthorize and revise the construction grants program. This legislation, H.R. 4503, incorporated many of the reforms sought by the Administration.)

Additional indications have been presented in connection with the Clean Air Act. In August EPA Administrator Anne Gorsuch announced a series of "guiding principles" that the Administration would seek during congressional reauthorization of the Act. One of these called for according the States full partnership in implementing air quality goals. In November a series of proposed Clean Air Act changes prepared by the Administration, more specific than the earlier guiding principles, were made public; they included proposals regarding interstate pollution abatement, generic State Implementation Plan (SIP) approval, and Federal auditing of SIP implementation.

What is the Federal Interest?

Many State officials welcome new federalism and look forward to the transfer of responsibility to their level of government. Yet a number of them view the Administration's apparent philosophy of federalism as applied to environmental programs in particular with some apprehension. As they see it, the Administration's approach to devolution of Federal responsibility for environmental management is largely a budget-cutting exercise that will simply shift the existing financial, technical, and administrative burden of these programs from the Federal level to State and local levels, while making no change in overall program requirements. Part of their generalized concern may stem from the fact that many details of the Administration's approach to environmental policy are lacking, so

far, except for the Clean Water Act proposals. Phaseout of the noise control program represents Reagan federalism applied through the strategy of the budget.

An important step to precede either administrative or legislative changes affecting current Federal-State relations, according to these officials, is to enter into a dialogue to determine what is the Federal interest and what is the interest of State and local governments in the future of environmental programs, as each level is made responsible for activities that it does most effectively.

There are several possible ways of defining the Federal interest. For example, current environmental laws place the highest priority on protecting public health. In addition, consideration of a number of public welfare concerns is expressly called for in Federal laws, such as the Clean Air Act which mandates protection against: "effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being." 102/

Furthermore, that law and others also endorse a number of what might be considered social goals to be achieved by carrying out a national program. In many cases these goals are implicit statements of policy, rather than explicit. A partial list could include the following:

--articulating the means to allocate or permit use of the environment, which is a public good or common-property resource not ordinarily subject to the price system of the free market;

--designing programs to have neutral impact on economic competition;

--protecting right of even the most sensitive or unique species and individuals; and

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102/ Clean Air Act, section 302(h).

--stimulating technological innovation.

Beyond elements of the Federal interest already provided in law, State officials suggest that the minimum amount of Federal interest consists of:

--Establishing the framework and agenda for State and local actions to achieve certain widely accepted social and environmental goals, by stating through policies and standards what the program objectives are and what the measuring stick will be to determine the program's progress.

--Maintaining a high national level of program consistency, to safeguard equity, where it cannot otherwise be achieved by local or interstate action alone.

--Assuring the capability of States to carry out their responsibilities adequately under a national program, including through technical and training assistance and, fundamentally, financial support.

It is the interest of State governments, then, to achieve the objectives and purposes of the national program through designing and carrying out environmental implementation plans.

Similarly, State officials say, there ought to be certain shared activities, including development of national regulations that are implemented by the States.

Within these broad areas, where there is much room for discussion, the important first step, according to State officials, is recognizing appropriate spheres of interest for each level of government.

Based on the Clean Water Act proposals, however, some State agency officials surmise that the Administration has determined that the Federal interest in environmental issues in fact encompasses public health concerns only (which was the earlier public orientation towards the environment) and excludes public welfare concerns, such as recreation or aesthetics, or

protecting the values of economic equity and efficiency. Moreover, judging from statements made so far by Administration spokesmen, State officials say, it is not apparent that Federal policy will continue to emphasize such goals as stimulating technological innovation or protecting the most sensitive or unique species or individuals.

Overwhelmingly, State officials emphasize that environmental policy management is a partnership among the various levels of government and that it would be detrimental to the programs for any of the partners to alter that relationship abruptly by abandoning certain responsibilities or commitments. The consequences are likely to be highly disruptive, both to older and more established programs such as air and water quality, and to newer programs such as hazardous waste management.

Moreover, the States generally are not unhappy with either the objectives or general direction of current environmental policies. They welcome a continued Federal presence that provides minimum standards of nationwide consistency (or, in the water quality area, standards assuring national comparability) to guard against problems of interstate competition.

Issues of Added Responsibility and Adequate Funding

Since the 1960's, many States have undergone a great transformation in their sensitivity to environmental concerns and their competence to administer a wide range of environmental programs. Moreover, State officials bristle at suggestions that their legislatures and administrative agencies are generally inept, unsophisticated, and powerless to fight off special interest pleading by business. 103/ And the States contend that, in terms of sensitivity to

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103/ See, for example, the exchange contained in: Greider, William. Those Rancid State Pols are Our New Saviors. The Washington Post, Oct. 4, 1981.pp. C1, C5; and Doyen, Ross O. The Transformation of the States. The Washington Post, Oct. 25, 1981. p. C3.

local needs and interests, the performance of the national government in recent years does not argue persuasively for massive retention of powers at the Federal level, in preference to State levels.

If new federalism is to succeed, says Ross Doyen, president of the Kansas State senate and the National Conference of State Legislators, and many other State officials, there is need to provide States with real flexibility to administer programs that are national in character. That need existed, in their estimation, before policy pronouncements by the current Administration were made. 104/ Fiscal pressures now, particularly cuts in assistance to States and localities, make the need for flexibility even more urgent than it was when the non-Federal partners in government were complaining largely of duplicative and burdensome Federal regulation (see discussion in Section III). The issues of added responsibilities and adequate funding include:

1. Delegation. State program officials have generally supported recent congressional actions to delegate key management and decisionmaking functions to qualified States. 105/ Portions of many programs already are largely under State control, aided by Federal financial assistance. Delegation can be a significant tool for accomplishing administrative and fiscal efficiency, as well as designing programs that will be capable of responding to local needs. Delegation has occurred in a number of areas under various statutes (particularly for permit issuance), as is indicated in Table III.

104/ Doyen, The Transformation of the States.

105/ Cf., GAO Report.

TABLE III

State Program Management/Delegation
(States with EPA-approved Delegation, as of October 1981)

Clean Air Act		
Permitting of new and modified sources in prevention of significant deterioration (PSD) areas	12	(8 more States have partial delegation)
Clean Water Act		
Issuance of National Pollutant Discharge Elimination System (NPDES) permits	33	
Construction grants program management	43	
Resource Conservation and Recovery Act		
Permitting of hazardous waste treatment, storage, or disposal	0	
Other parts of hazardous waste program*	25	
Safe Drinking Water Act		
Primary enforcement authority for national drinking water standards	45	
Primary enforcement authority for underground water source protection	0	
Federal Insecticide, Fungicide and Rodenticide Act		
Primary enforcement for applicator certification and training	48	
Primary enforcement of restricted pesticide uses	46	(1 more State has partial delegation)

* RCRA Phase I or interim authority program allows qualified States to list and identify hazardous wastes, as well as enforcing Federal standards for generation, transport, storage, and disposal of hazardous wastes.

States continue to support the concept of meaningful program delegation, built upon an intergovernmental relationship in which States are required to develop sound implementation plans and the burden of proof is placed on the Federal government to demonstrate that a State is not managing national environmental programs adequately. As the States see the situation today, they are required continuously to demonstrate the adequacy of their efforts under the shadow of day-to-day Federal oversight and case-by-case reviews. Real administrative relief could be accomplished, State officials say, through less frequent Federal oversight.

On the other hand, for some Federal policymakers and officials, it would require a certain leap of faith to reduce the Federal oversight of delegated activities that now accompanies some environmental programs, such as EPA's right of case-by-case review and veto of Clean Water Act discharge permits issued by qualified States. The legacy of continuing such oversight stems in part from efforts to insure accountability for Federal grant funds allocated to States (and the fact that EPA is accountable to Congress for grants made to States) and in part from earlier congressional concern about States' capability and willingness to comply with mandates of Federal law, as discussed elsewhere in this report.

At the same time, these State officials insist that even delegation of current programs--much less increased program responsibilities in new areas--will not work properly in the absence of necessary financial support. What that means, plainly, is the need for no less real Federal support than has been available in the past.

As for new program responsibilities, States say it is unlikely that they would try to stretch the same amount of assistance funds to cover extra acti-

vities, such as dredge and fill permitting authorized by section 404 of the Clean Water Act. A California official recently said that his state would resist attempts to give it additional authority unless it also receives adequate resources to do the job. 106/

In recent environmental enactments in which Congress has encouraged delegation of program responsibilities to qualified States, it has provided inducement in the form of grants-in-aid to assist States in establishing and maintaining those management activities. The grant authorities for program management include:

--Clean Air Act, sections 105, 106;

--Clean Water Act, sections 106, 205(g), 208;

--Solid Waste Disposal Act, sections 3011, 4008, 4009;

--Safe Drinking Water Act, section 1443; and

--Toxic Substances Control Act, section 28.

Other types of State assistance also are provided: Section 314 of the Clean Water Act, clean lakes grants; section 1444 of the Safe Drinking Water Act, special study and demonstration project grants; and section 23 of the Federal Insecticide, Fungicide, and Rodenticide Act, program and enforcement grants.

Assistance grants generally represent one-fourth to one-third of State

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106/ The Pitfalls of "Defederalization." Chemical Week, v. 128, June 17, 1981. p. 58. Some States may find other reasons for not taking on new responsibilities: In the past some might have sought permitting authority on the theory that direct Federal regulatory presence in a State ensured stricter regulation of industry than under a comparable State-run program. These States may now take a "wait and see" stance, anticipating regulation by the Reagan Administration that will be more favorable to industry. Such a changed Federal attitude towards regulation might reduce a State's motivation to take on permitting responsibilities.

environmental agency operations. 107/ For Fiscal Year 1981, congressional appropriations for all of these grant programs totaled $272 million. For FY82 the Reagan Administration originally requested $227 million, which included a $12 million increase in the hazardous waste area and a $34 million decrease for areawide waste treatment management planning (the latter was also contained in the Carter FY82 budget). However, several areas--air and water quality, public water system supervision--were requested at the same level as provided by Congress in FY81. The effect of inflation, which reduces the dollar's purchasing power, means that FY82 funding in those areas will actually be less than in the previous year.

2. Funding needs. In the view of nearly all State officials, the two prominent issues are responsibility and dollars, and they are directly related: added program responsibility requires more dollars. If sufficient resources are not available to manage Federal programs, many States say they will be forced to return delegated responsibilities to the Federal government. As of Oct. 1, 1981, this had occurred in three different States:

--Citing duplication of Federal and State efforts, the Idaho legislature failed to appropriate funds for the State's air quality program, thus leaving all responsibility with the U.S. EPA;

--Wyoming returned its hazardous waste management grant to EPA, thereby returning responsibility for activities including enforcement; and

--In order to fund the State's hazardous waste program, Iowa gave up delegated primacy for its drinking water program, returning responsibility

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107/ In one area, for example--air quality--Federal funds amounted to $88 million, or 38 percent of the Federal-State-local total of $230 million for air programs.

for monitoring and enforcement to EPA.

Moreover, more than a dozen States were facing the prospect of giving up delegated functions under the Clean Water Act construction grants program, as a result of no congressional action on a FY82 appropriation for that program or the specific grants management program.

Some State officials contend that proponents offer two justifications for increasing State responsibility while simultaneously decreasing Federal financial support: (1) greater administrative efficiency and productivity can be achieved, and (2) more simplistically, labor is less expensive at the State level, so that two State workers can be hired for the price of a single Federal worker. States tend to agree with the first line of reasoning; they are less convinced of the second and would like an opportunity to debate its implications.

To some critics of State government, it sounds as though the States are making the same arguments in the environmental area as they are in many other areas of public policy: Please give the States more day-to-day control over the operation of national programs, with less frequent Federal oversight, but don't reduce the current level of financial support. That type of argument, when made by States or others, may be weak during an era in which all levels of government and most Federal and non-Federal programs are adjusting to cutbacks and facing new fiscal realities.

Thus, it would not be difficult to dismiss the States' concerns as the pleading of special interests except for one point: the real possibility, according to the States, that environmental protection programs valued by them may be permanently disabled if the current intergovernmental partnership is disrupted. If the Federal government, through policy changes intended to

increase State responsibility and to cut the Federal budget, decreases its support activities significantly, the consequence is likely to be that less protection of the environment will occur, the States report, because the States are facing retrenchment in numerous program services and few can afford to accept many new responsibilities.

Many persons hold the view that whatever level of government mandates particular policies should be responsible for funding the cost of implementation. For example, if the Federal government directs health or income assistance programs, it should provide necessary financial support. Recently The Christian Science Monitor editorialized that in the current era of new federalism, there must be an element of fiscal accountability between mandating policies and picking up the costs. "This can be fostered by ensuring that whichever level of government mandates an expenditure--pays for it. If the federal government requires air or water of a certain standard, for example, it should be expected to provide funding for enforcement." 108/

At State levels, environmental programs must compete for funding and resources with other programs having strong political constituencies and public support. One unnamed EPA official was recently quoted as saying, "If you now yank the state grants, the states will use this as an excuse to do much less. They are having to cut back their budgets too." 109/

In some program areas, the States have begun preliminary assessments of current resources, manpower, and funding, which could provide a baseline

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108/ Solutions for the States. The Christian Science Monitor, Nov. 5, 1981. p. 24.

109/ Mosher, Lawrence. Will EPA's Budget Cuts Make It More Efficient or Less Effective. National Journal, Aug. 15, 1981. pp. 1467-68.

for judging future changes. For example, a survey of State air programs reported these results:

> --90% of the states responding indicated staffing vacancies between 5% and 25% of authorized air program positions, with an average of 10% vacancy rate....Besides personnel shortages, most agencies expressed needs in the areas of monitoring equipment, vehicle repair and replacement, and data processing equipment and services.
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> --Most states (83%) experienced some increase in funds from non-federal sources (e.g. state funds, fees) from FY-80 to FY-81. The average increase was approximately 10%....the increase in state funds, in most cases, were to meet mandated salary and cost of living increases for state employees since no increases in federal funds were available for this purpose. It is unlikely that state funding increases will occur in FY-82 or 83.
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> —What we were afraid of happening in the absence of increased funds has started to happen. For example, 95% of the states are either under a hiring freeze or are experiencing serious delays in filling vacancies. 90% of the states have delayed or cancelled needed purchases of monitoring equipment, supplies, vehicles, and maintenance. Most have severe restrictions in travel which effects enforcement, monitoring and staff development.
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> These responses to rising program costs and level funding have had major consequences. 90% of the states are reducing their monitoring programs. Over 50% indicated a general slowdown of all program implementation, particularly enforcement. States are doing fewer, if any, routine inspections, are making less frequent major source tests, and are cutting back on complaint follow-up. 110/

The president of this air pollution program group, James Hambright of Pennsylvania, recently wrote that "State air programs are currently in the midst of a crisis in resources and manpower. The prospects of additional cuts in federal support in the face of continuing inflation and the shift of more responsibilities to the states will be devastating to our already understaffed programs." 111/

110/ State and Territorial Air Pollution Program Administrators. Summary of 1981 STAPPA Questionnaire re: State Air Program Resources. June 1981.

111/ STAPPA Warns EPA Cuts Will Result in Ineffective State Programs. Air/Water Pollution Report, v. 19, no. 42, Oct. 26, 1981. p. 415.

In the absence of continued Federal financial support, the States do not anticipate that they would be able to make up the difference through State funding. Most officials do not expect that legislatures will increase environmental program funding--even in a tradeoff for decreased Federal involvement--at a time when many other State programs that previously were aided by Federal monies, such as education and health, are being pressed. One possible exception, however, is hazardous waste programs, in part because of high public concern over the issue of hazardous waste management. Some States might authorize new user fees or permit fees (either construction or operating) to meet a shortfall in Federal aid for this or other program areas, but in many States there is little interest in establishing new permit fees. Some States already are collecting such fees. And at State levels there are, in some cases, legal obstacles and political reluctance to raising taxes for environmental or other programs.

In the past President Reagan indicated support for shifting more taxing authority and turning the revenues of various Federal taxes back to States and localities to help them accommodate increased responsibility that are the outcome of new federalism. However, State officials contend that the revenue enhancement measures that they say they were promised have yet to materialize. Recent reports from the President and Administration representatives, while they are preliminary, do not encourage hopes for additional aid of this type. 112/

What about consolidated or block grants? Some persons are discussing replacing categorical grants with block or consolidated grants. Block grants have the appeal of providing Federal support with greater State flexibility to

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112/ Broder, David S. Tax Turnback to States is Done, Aide Says. The Washington Post, Oct. 23, 1981. p. A14; Broder, David S. Reagan Sees Little Fiscal Help for State, Local Governments. The Washington Post, Nov. 22, 1981. pp. A1, A10.

allocate funds and set the rules than is common to categorical grants, plus fewer of the Federal strings attached--particularly reporting, record keeping, and auditing requirements intended to insure that categoricals will be spent according to congressional or administrative directive.

Block grants are something of a mixed blessing, however. On the one hand they give States more power to establish basic program rules. Yet there is concern that block grants, if not structured with adequate safeguards, will result in significantly reduced funding for particular programs that may not have a strong constituency with the Governor or environmental department. For example, hazardous waste management problems currently are "high visibility" issues in many States. Some persons fear that, under a block grant arrangement, ongoing air, water quality, or drinking water programs could suffer from funds being diverted to hazardous waste needs. Even today certain States are believed to be concentrating on their hazardous waste programs, to the near exclusion of non-hazardous waste management and resource recovery, in part because no Federal funds for non-hazardous waste State programs have been appropriated since FY80.

Moreover, officials of these environmental programs are apprehensive about being lumped together to compete for financial support in a block grant that would also include public works programs, as some have suggested.

Added to their concerns over competing for available funds, State officials fear that the monies under a block grant would total less than they now receive for the several categorical grant programs. The Administration's original block grant proposals in the health, social service, and community development areas were accompanied by overall spending cuts of 25 percent or more. (In fact, the cuts approved by Congress as part of block grants

contained in the 1981 Omnibus Reconciliation Act, P.L. 97-35, averaged 13 percent less than FY81 categorical grant totals.)

In general States have taken the position that, if Federal requirements were reduced in connection with block grants, they could, in turn, absorb a cut in total aid of about 10 percent. 113/ More drastic cuts in funds could be expected to restrict the ability of States to meet national program objectives.

Another aspect of block grants has concerned State officials in the past and could do so again. That is the tendency, even under a system combining a number of former categorical grants, of block grants to continue to be constrained by conditions and Federal "strings." The Advisory Commission on Intergovernmental Relations refers to this fact as the "hybrid nature" of most block grant programs--none truly fits the model of aid that is free from performance and procedural conditions imposed by the Federal government. Furthermore, over time block grants have a tendency to acquire additional program and other constraints. 114/

General revenue sharing, in contrast, essentially does maximize State and local flexibility in determining activities to be funded. But just as with block grants, the ability of a specific effort such as pollution control to compete at the State level for revenue sharing monies is questionable. Also, it would be hard for revenue sharing to be used to supplement reduced categorical aid, since 1980 amendments to the State and Local Fiscal Assistance Act (P.L. 96-604) require States to give up an equal amount of money in cate-

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113/ Stanfield, Rochelle L. Block Grants Look Fine to States; It's the Money that's the Problem. National Journal, May 9, 1981. p. 828.

114/ Advisory Commission on Intergovernmental Relations, Categorical Grants, p. 66.

gorical grants for revenue sharing funds received.

Implications for enforcement. Current environmental programs require that Federal and State governments work together to ensure adequate enforcement. For example, it is unlikely that EPA or an individual State could manage the range of activities from standard-setting through enforcement to administer a drinking water or hazardous waste program. Furthermore, instances of EPA's taking regulatory action when a State did not--such as promulgation of the Ohio air quality State Implementation Plan or revision of the Texas and Alabama water quality standards--have resulted in serious intergovernmental tensions and protracted litigation, as well as enforcement tools of questionable value. 115/

As discussed above, the States of Idaho, Wyoming, and Iowa have returned certain delegated program responsibility to EPA. Of course, it is unclear whether the deliberate action of three states represents the beginning of a trend to give up primary enforcement or delegated management responsibilities, but it may constitute a warning signal. In many States decisions of this type may not occur until 1982, when legislatures reconvene and budget cuts are made final. Even State officials who do not expect to see massive turning back of responsibilities--or, reverse delegation--recognize that some confusion over authority is likely to result. Any large-scale movement or trend probably represents a step backward in terms of State responsibility and could have adverse effects on aspects of these environmental programs, ranging from permit issuance to compliance monitoring and enforcement. Indeed, monitoring is a key element in enforcement. Failure to continue and expand

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115/ Enforcement May be Weakest Link in States. Conservation Foundation Letter. November 1980

monitoring efforts would deprive States and the Federal government of information needed to assess the success of environmental programs.

Under the major Federal environmental programs, in the absence of State primacy or delegation, EPA is responsible for enforcement activities. However, it is at least open to question how adequately even the most well-intentioned and resourceful Federal agency could enforce today's environmental laws, if more than a few States elect to return that responsibility to the Federal government. One can envision a situation in which individual States elect to manage and enforce certain programs (hazardous waste, for example) but not others (air quality, perhaps), leading to variations among the States and a mixture of remaining responsibilities falling back to the Federal government. Thus, rather than achieving greater coherence in environmental decisionmaking, one possible consequence of a devolution of Federal involvement could be greater fracturing of responsibilities. Probably few persons would like to see another possible result: neither Federal nor State enforcement (although some do theorize that zero enforcement and de facto repeal of the environmental laws may actually be the intention of this Administration). 116/

On the other hand, in some program areas States support certain changes to the current Federal enforcement role. In at least one case--air quality--State program officials would like to see a strengthened Federal role, particu-

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116/ See, for example, Less is Not More at E.P.A. New York Times, Nov. 7, 1981, p. 22; Drayton, William. Cutting EPA's Muscle. Environmental Action, November 1981. pp. 24-25; and Holden, Constance, EPA Hard Hit by Budget Cuts. Science, v. 214, Oct. 16, 1981. pp. 306-07. The latter article quotes Dan W. Lufkin, head of the Reagan environmental task force, as characterizing the Administration's approach to environmental regulation as "at best extreme and at worst bizarre."]

larly for dealing with interstate disputes. In most other areas, including water quality, State officials would prefer a reduced Federal role that would allow States to attempt to mediate with industry or between States before Federal intrusion occurs. It is not clear or widely agreed at this point, however, how much of a return to pre-1970's enforcement schemes is desired by the States.

Other implications: continuing the commitment to national policies. State agency officials recognize that some States have enacted environmental laws and established programs more in response to Federal mandates than because of a major commitment to protecting the environment. 117/ Some States have provided only enough State funding to ensure their eligibility for matching Federal grant dollars.

State agency representatives point out that, if the Federal role is diminished (1) State funding may also diminish or disappear, because the incentive of Federal matching money will no longer exist, and (2) States with little or no environmental commitment today may find it more convenient to decrease environmental program activities below current effort levels. For example, under Subtitle D of the Resource Conservation and Recovery Act, States with approved plans may receive Federal financial assistance to implement solid waste management and resource recovery programs. That type of grant assistance was terminated after FY81. Without the inducement of aid, some States may elect not to carry out solid waste programs to the degree consistent with a previously approved management plan. This possibility was noted recently by the National Environmental Development Association (NEDA), a coalition of management, labor, agriculture, and other interests. "Administration and

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117/ Haskell, Elizabeth H., and Victoria S. Price. State Environmental Management, Case Studies of Nine States. New York, Praeger Publishers, Inc., 1973. p.243.

enforcement of regulations will be handled to a greater extent by states. This may mean lesser enforcement, partially because of reducion in federal outlays for state programs. States will decide their own needs and priorities and possibly opt for reduced controls in order to attract business." 118/

Despite some assertions that environmental programs today are as much a part of most State governments as highway departments were in the 1950's, 119/ others would disagree, and any real test of the validity of the assertion may well come as a result of applying "new federalism" to environmental programs. The Wall Street Journal reported recently that in Oregon, a leader among States committed to environmental protection, economic conditions such as high unemployment and a forest products industry in recession are raising doubts about that commitment. A Sierra Club lobbyist was quoted: "Environmentally, 10 years ago this state was a knight on a white charger. Now we're riding a gray mule." 120/

If problems of diminished State funding or program activity do occur, it is at least possible that circumstances which first prompted the larger Federal role in the environment could recur: interstate inconsistencies that result in regulatory inefficiency and inequity between States. Moreover, it is open to question whether States would give the same priority to public welfare values, such as recreation and aesthetics, or other goals such as participatory decisionmaking and protecting endangered species, that national policies currently endorse.

Water resource planning is one area in which adjustments are being made

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118/ Washington Balance. No. 97, November 1981. pp. 2-3.

119/ Council of State Governments, The Environment Comes of Age, p. 28.

120/ Blundell, William E. Oregon's Environmental Zeal is Yielding to Economic Needs. Wall Street Journal, Oct. 13, 1981. p. 35.

now as a result of discontinued Federal involvement. Federal support for the Nation's six river basin commissions ceased on Sept. 30, 1981, since the FY82 budget provided no funding. Some persons question what will now happen to regional river basin planning, but it probably is too early to answer that question definitively.

A few of the commissions have moved to continue their activities in some way. For example, the New England River Basin Commission accelerated some of its special studies and turned others over to member States. Similarly, members of the Ohio River Basin Commission and Great Lakes Basin Comission made plans to continue more limited efforts with remaining State funds. The Upper Mississippi River Basin Commission will remain in existence until Dec. 31, 1981, in order to finish its master plan.

The 10 member States of the Missouri River Basin Commission will continue some interstate planning efforts through a newly formed Missouri Basin States Association. Moreover, Commission members agreed at their final meeting that a Federal presence is necessary to the new Association, to share information and contacts among Federal and State agencies. 121/

Considerations when altering the Federal-State role: timing and other factors. While State officials assert that administrative changes could accomplish a greater degree of State responsibility, particularly by removing the Federal government from day-to-day program reviews, they point out certain other potential problems concerning both administrative and legislative changes.

121/ Commission Closes, States Seek to Continue Activities. MRBC Basin Bulletin, v. 8, no. 6, July-Sept. 1981. p. 1.

Timing. States require adequate time to adjust to major program changes, including anticipated changes in Federal-State relationships. Criticism of management of the Clean Water Act construction grants, for example, has focused in part on costly delays caused by the States' difficulty in responding to legislative changes, retroactive application of regulations, and fluctuating levels of Federal funding. In order to ease any transition towards increased program responsibilities, State officials maintain, it would be desirable both to shift those responsibilities gradually and to continue financial aid. This concern about allowing time for orderly assumption of responsibilities also has arisen in connection with block grant proposals.

The types of needed adjustments could include:

--recognizing what can and cannot be accomplished under current Federal laws. The Federal laws themselves vary considerably in terms of apparent congressional intent towards State management, ranging from the Safe Drinking Water Act, which is largely a national program superimposed on existing State programs, to the Clean Air Act, containing a high degree of Federal specificity over the national program and elements of the national program that may be delegated to qualified States. Differences occur within a single Federal law. Under the 1976 Resource Conservation and Recovery Act, Congress authorized two quite different programs. For nonhazardous solid wastes, the law provides for Federal technical and financial assistance to State and regional planning efforts. For hazardous wastes, the law provides for a comprehensive program of Federally established cradle-to-grave standards and permit requirements. The Act provides for Federal enforcement of the hazardous waste program, if delegation to a qualified State does not take place, but it provides for no similar Federal enforcement for the non-

hazardous waste provisions of the law, except for a prohibition on open dumping (sec. 4005). Such differences between and even within laws may need to be recognized.

There is some concern among State officials even about current regulatory changes being made administratively by the Executive Branch. For example, in August EPA proposed to reduce the number of Clean Water Act construction grants rules considerably. Some States and other individuals have urged that any effort to clarify and condense the rules, however laudable, should not come at the expense of overall consistency (within the rules package and between the Act and regulations) or clear statement of what will be required of grant recipients. Likewise, there is concern that some regulatory changes, if made hastily, could possibly result in legal challenges, such as a lawsuit to straighten out statutory ambiguities left unclear in general regulations.

—changes in State laws. Officials point out that many State environmental laws were enacted to meet only the minimum requirements of Federal statutes. In some cases the States may need to amend their own laws to reflect increased responsibilities or to increase State authority in areas where the Federal role has been dominant. State laws may specifically limit agency jurisdiction, a fact having implications for the kinds of standards or enforcement that may be imposed: some State laws regulate all waters comprehensively, others regulate only surface waters while ignoring interrelated ground waters. 122/

Some States may attempt to increase taxes in order to replace monies

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122/ Grad, Rathjens, and Rosenthal, Environmental Control, p. 93.

no longer coming from the Federal government. However, it would take time to enact new taxing schemes, and most States would prefer to see a transition in reduced Federal support during such a period.

--differences among State agencies themselves. Each of the States has organized independently and somewhat differently to deal with environmental concerns. Some have established a single department of the environment, many others have two or more agencies, including, for example, a natural resource agency to issue standards or codes and a public health agency for enforcement, as well as numerous expert boards or citizen commissions. Five States do not have a lead agency implementing air and water quality programs (Maryland, New Hampshire, Texas, Virginia, West Virginia). 123/ The absence of a lead agency may well require that the resources available for responding to increased responsibilities be viewed collectively for all environmental activities; an individual State may be interested in acquiring greater powers in one program area but not others.

Institutional limitations concerning enforcement need to be examined. Problems arising from inadequate legal powers--particularly at local government levels--are notable. Although many State codes permit a variety of criminal and civil sanctions, enforcement at the local level is likely to be in the form of criminal prosecution, as for misdemeanors. Local use of civil penalties often is not permitted by the State, while the use of the criminal process is a rather ineffective tool for obtaining abatement of environmental pollution. 124/

Overlap and duplication can occur at State and local levels, just as

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123/ GAO report, p. 8.

124/ Grad, Rathjens, and Rosenthal, Environmental Control, pp. 155-56.

between Federal and non-Federal units of government. In certain States there may be well coordinated relations between State and local agencies. Elsewhere the lines may be less clear, as in a State that permits unincorporated municipalities to operate a health department, while there also is a county health department. The variations in structural or institutional arrangements authorized by State constitutions and legislation suggest that each unit of government may need to examine how best to organize itself in order to manage any increased responsibilities.

State officials emphasize the need to recognize the administrative and legal differences among States. All of these factors, ranging from existing structural arrangements to constitutional limitations, may affect the ability of States to accept and carry out new responsibilities for environmental programs, however much they may wish to do so.

(3) State-local relations. Local and State governments are closely linked to each other by legal, financial, and administrative ties, a fact that often results in tensions and hostilities similar to those that exist between the Federal and non-Federal levels of government.

To some extent the existence of strong national environmental programs may have tended to unite State and local governments, especially in opposition to Federal enforcement, for example. Local and State government officials also may share the feeling that they have little or no role in formulating Federal standards with which they must comply and which both perceive as placing unrealistic demands on their own resources. 125/

Recently, for example, the National Governors' Association has been

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125/ Magazine, Environmental Management in Local Government, p. 96.

pressing for greater involvement in the regulatory process, from the conceptual stage through final promulgation, and has supported amending the Federal Advisory Committee Act to allow State or local officials special status in development of Federal rules.

One account of early response to new block grants in the health and social services areas reported that some cities, counties, and State legislatures have drawn together against their governors in struggles over who will wield powers relinquished by the Federal government. 126/

Yet it is at least open to question whether a devolution of Federal authority in environmental programs could exacerbate the natural tensions existing between separate State and local governments. Urban municipalities, in particular, fear that they will come out as losers if spending decisions are made at State levels, due to rural-urban conflicts in many State legislatures. Strong interest in funding environmental programs through a block grant, rather than the current categorical grants, could dismay local government officials, wary of losing the limited authority they now have, as a result of direct links to the Federal government (certain grant assistance, for example), to State-level decisionmakers. If the States run the programs, some say, they would like to see Federal law mandate the local share or, at least, require consultation with local governments. 127/ Of course, if requirements or conditions of that sort were attached, it would tend to violate the principle of block grants that allows recipients to set their own rules.

126/ Stanfield, Rochelle L. Filling the Federal Vacuum. National Journal, Oct. 24, 1981. p. 1913.

127/ Stanfield, Rochelle L. Block Grants Look Fine to States; It's the Money that's the Problem. National Journal, May 9, 1981. p. 831.

Today State agency officials do not agree widely about the possible effects of reducing Federal program authority on State-local relations. On the one hand a reduced Federal role, particularly day-to-day program oversight, could relieve some of the conflict and confusion stemming from the multiple layers of government dealing with environmental policy. Whereas some programs might functions more smoothly--drinking water, for example--others such as water quality might not, State officials indicate. One concern appears to be that where viable local government programs or lobbies for them have been developed, these could be adversely affected by a newly-strengthened State role. If decentralization of national environmental programs occurs, one is likely to hear renewed discussion in the future about what is the preferential level of government for program management, but the debate is likely to take place between State and local or regional governments rather than between Federal and non-Federal units.

Conclusion

This report has discussed several factors that were key determinants in elevating environmental policy concerns from local and State levels to the Federal level, including:

--the need to deal with pollution problems that extend beyond boundaries of political jurisdictions;

--the desire to stimulate State and local capability and competence for implementing and administering environmental programs;

--the desire for economic equity among regions to be achieved through policies that have neutral impacts on competition; and

--interest in regulatory efficiency, particularly for major industries that manufacture and market their products nationally.

Judging from past complaints of State officials, Congress has had rather mixed success in developing those policies while, at the same time, attempting to preserve the Federal-State-local partnership that predates specific concern for the environment and many other of today's policy issues. Now it appears that there is considerable interest among policy makers and the public at large in examining and restoring primacy of State and local governments and, indeed, in reassessing the priorities and goals of government at all levels. That public reassessment is challenging a number of widely-held beliefs, such as government's role in protecting economic equity.

However, the view that the Federal government has overstepped the bounds of its appropriate role and that reforms are needed is not shared universally. The new federalism philosophy that supports greater State and local responsibility has drawn widespread attention recently, but many defenders of the current federal system continue to argue that a cooperative intergovernmental relationship is necssary in order to attain certain national objectives and widely accepted social and environmental goals.

Proponents of program decentralization may argue that, if the effect of Federal budget cuts (particularly State assistance grants) is that States will assign environmental protection activities or functions a lower priority in their own budgets, such decisions reflect nothing more than the legitimate and proper workings of a democratic system. No less than in the marketplace in which business operates, State and local governments should be allowed to determine the agenda for assisting citizens within their own jurisdictions.

There are at least two difficulties with that type of argument, however. First, short of outright repeal by Congress, the requirements of Federal

environmental laws are still in place, including specific and procedural requirements imposed on States and localities to carry out current national programs. While it is undoubtedly true that many requirements could be eased administratively (EPA and others in the Executive Branch are examining this now), others may require statutory change. In the meantime, a great many statutory and regulatory--as well as some court-ordered--requirements must be met.

Second, the types of decisions made by government regarding policies pursued and promoted for its citizenry differ considerably from others that are made by private industry, profit-seeking entities. A key distinction is the social component. Governmental activities may be partially characterized as providing for a host of services that private industry otherwise would not, for lack of profit incentive. Although environmental protection is a newer addition to those activities (compared with police, fire protection, or education), it is not apparent that today's public is eager for government to cease those efforts. Recently published polls concerning attitudes towards clean air and water legislation indicate strong continuing public support. 128/

The ability of States to cope with increased responsibilities under new federalism is likely to vary, depending on such factors as whether a State currently is enforcing Federal environmental laws (so that a shift from Federal to State would not be highly disruptive to ongoing activities) and resources available within the State to replace diminished Federal funding. A healthy and vigorous state such as California or another with energy

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128. Pollster Lou Harris to Politicians: "Hands Off" Environmental "Sacred Cow." Inside E.P.A. Weekly Report. Vol. 2, no. 43, Oct. 23, 1981. pp. 1, 7.

resources to tax such as Texas can be expected to absorb Federal cutbacks better than states that are experiencing recessions more than the nation as a whole, such as Michigan, Ohio, or Oregon.

As discussion of returning responsibility to States and localities begins to occur, questions have been raised already and more are likely. One of these, discussed in this section of the report, is how to finance increased policy and program responsibilities. Yet, if major responsibilities are shifted from the Federal level and even if funding were not a problem, several issues appear to remain for consideration. These include:

(1) Much pollution of the Nation's air, water, and land (the extent of the latter is not well documented) land still is a regional and interstate phenomenon. Local or State resolution of these problems probably is no easier today than it was 15 or 20 years ago, due to continuing legal and institutional barriers.

Some institutional arrangements are in place to provide ongoing recognition that pollution extends beyond local borders, such as interstate compacts (where they exist) and Federally approved air quality control regions. Yet, as noted previously, the powers of regional authorities vary considerably, and for media other than air there are many geographic areas not fully covered by regional arrangements, thus raising questions about consistency.

(2) Furthermore, there is increasing concern today about long range pollution problems that extend well beyond regions and are interstate in nature. Transport of hazardous wastes may be such a problem. Similarly, States such as Pennsylvania, New York, and Connecticut have complained loudly that pollutant emissions atmospherically transported from sources

located in jurisdictions immediately next door and hundreds of miles away are endangering public health and welfare within their own borders. More recently, some of these States have taken their complaints into court, in ad hoc efforts to control distant sources. Similar concerns about long range pollutant transport are irritating U.S.-Canadian relations. There are a number of current proposals to amend the Clean Air Act in order to strengthen mechanisms for controlling interstate transport of air pollutants. However, those proposals may not be fully compatible with the concept of reduced Federal involvement in environmental policy.

(3) There is little evidence that the public is less concerned with protecting economic equity among States and individuals than was the case in the 1960's. Current debate over interstate transport of pollution emphasizes that point. Indeed, general concern about the economic impact of pollution control requirements reinforces the dual need to move cautiously before dismantling policies intended to equalize the competitive advantage among regions and before imposing additional requirements having unequal impacts. Thus, it may not be in the public interest to return to earlier times when economic rivalry between communities and States served as disincentive to improving environmental quality and resulted in policies, where they did exist, that represented the "lowest common denominator" among policy options.

(4) Similarly, there are few spokesmen among those regulated under national programs who are encouraging return to the regulatory inefficiency of varying State standards or programs. Recent comments by persons in the chemical industry, for example (see discussion in Section II), highlight concern about such a prospect.

If it is determined that the public continues to be interested in policies that provide for economic equity and/or regulatory efficiency, it may then be difficult to mesh those concerns with greater State and local responsibility. Some degree of Federal involvement may be required, beyond that envisioned by proponents of new federalism.

(5) Not long ago the New Yorker editorialized that the budget-cutting fever of 1981 seems to have produced a sort of "radical individualism" in which citizens, the States, and the Federal government deny their mutual responsibilities.

> Somewhere along the line, the very idea of society seems to have got lost, and one is left with a picture of the country as a collection of wholly self-interested, wholly rivalrous individuals, who are unacquainted with any notion of the common good. 129/

Arguably, environmental protection efforts represent instances in which the private economic interests of "rivalrous individuals" generally cannot and will not provide for the common good or the prosperity of society as a whole. As discussed earlier, pollution is an economic externality, because it imposes costs upon society as a whole, while the benefits of controlling it are not gained solely, or even primarily, by the person who institutes control measures. Unlike some other areas of public policy, market forces cannot necessarily be expected to fill the gap resulting from reduced government activity.

It is entirely appropriate to ask, however, what level of government or what arrangements of intergovernmental cooperation should be utilized for pollution control. Indeed, as has been noted by various State officials, environmental protection requires a partnership among levels of government.

129/ Notes and comment. The New Yorker, Apr. 27, 1981. p.36.

Radical alteration of the partnership, without negotiation among the partners, jeopardizes the environmental protection effort.

Moreover, the kinds of changes suggested by those who propose shifting responsibility to States and localities raise questions about concrete problems (financial concerns, among them) and other conceptual considerations (such as, continuing to provide for equity and efficiency) that may not be fully compatible with new federalism. It should be recognized that changes in environmental protection policies, such as devolving responsibility from the Federal level, have consequences and implications beyond the goals of simplification and decentralization that are cited by proponents of new federalism. That is to say, changes that would accomplish the goals of new federalism may rekindle other issues which have been more or less resolved and endorsed in the present environmental policy structure.

APPENDIX

Information in Section IV of this report is based in part on personal interviews conducted during September 1981 with representatives of the following organizations:

Association of Local Air Pollution Control Officials

Association of State and Interstate Water Pollution Control Administrators

Association of State and Territorial Solid Waste Management Officials

Conference of State Sanitary Engineers

State and Territorial Air Pollution Program Administrators